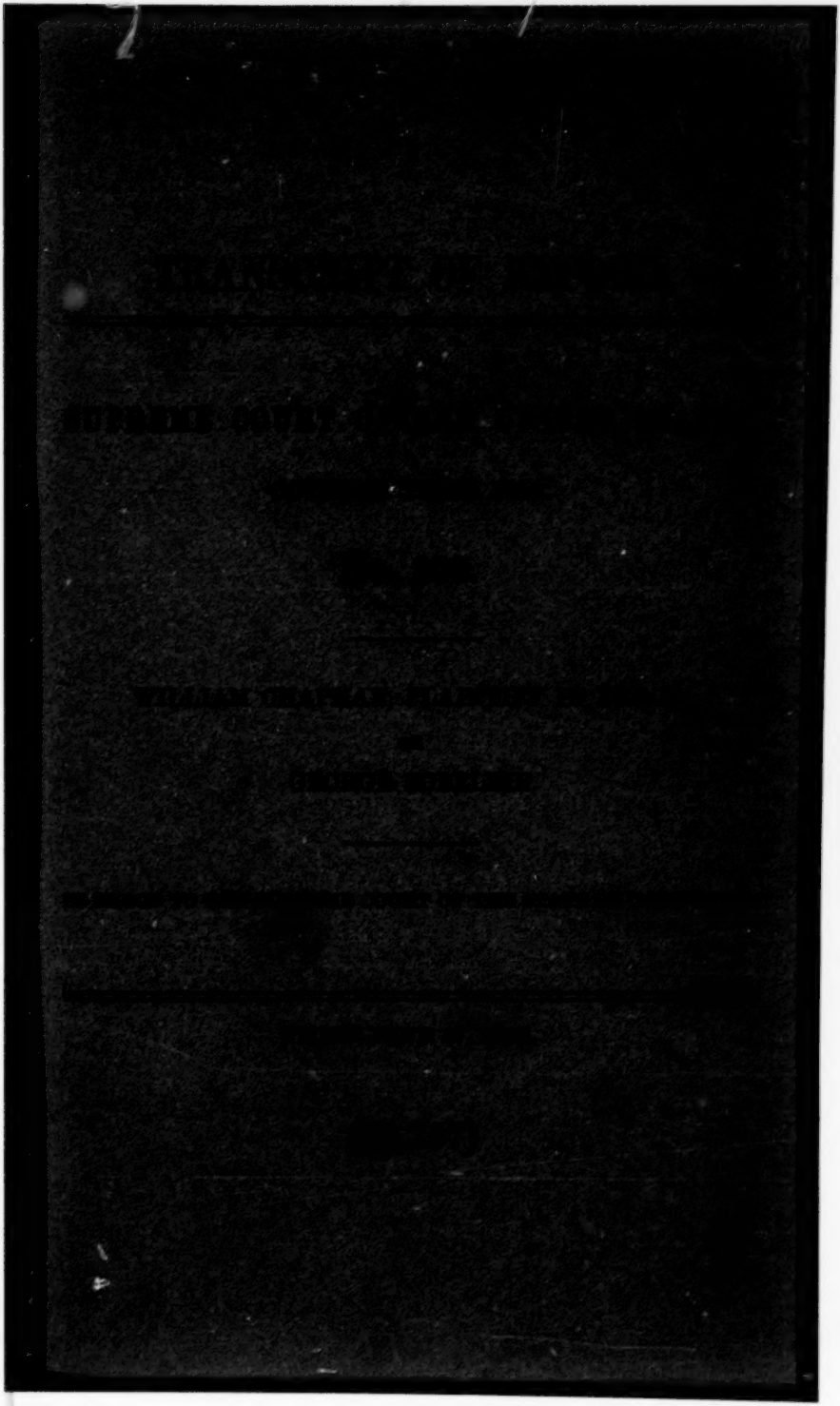


(23,757)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 200.

WILLIAM CHAPMAN, PLAINTIFF IN ERROR,

vs.

GEORGE ZOBELEIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 29, 1914.

In the Supreme Court of the State of California.

L. A. No. 2829.

WILLIAM CHAPMAN, Plaintiff and Appellant,
vs.
GEORGE ZOBELEIN, Defendant and Respondent.

Appeal from the Superior Court of Los Angeles Co. — Hon. N. P. Conrey, Judge.

TRANSCRIPT ON APPEAL.

Charles Lantz, Attorney for Plaintiff and Appellant.
Edward F. Wehrle, Attorney for Defendant and Respondent.

Filed Dec. 7, 1910. F. L. Caughey, Clerk, by M. C. Van Allen, Deputy.

In the Superior Court of the State of California in and for the County of Los Angeles.

No. 47970.

WILLIAM CHAPMAN, Plaintiff,
vs.
GEORGE ZOBELEIN, Defendant.

Amended and Supplemental Complaint.

Comes now the plaintiff above named, and leave of court having been first had and obtained for an amended complaint herein complains and alleges:

I.

That the plaintiff above named is now and for a long time hitherto has been the owner in fee simple, and entitled to the possession of that certain lot, piece, or parcel of land, situate, lying and being in the city of Los Angeles, county of Los Angeles, state of California, and bounded and described as follows, to-wit:

Lot thirty-four (34) of the University Addition tract, according to map thereof recorded in book 15, page 46, of miscellaneous records of said Los Angeles county.

II.

That the defendant claims an interest or estate in said land or premises, adverse to the plaintiff; that the claims of the said defendant are unfounded, and without any right whatsoever and that said

defendant does not own any estate, right, title or interest whatever in or to, or lien upon, the said land or premises, or any part thereof.

III.

That one of the claims of said defendant, George Zobelein, to an estate or interest in or to or lien upon said land and premises is based upon a purported assessment of said property and purported tax sales and deeds as hereinafter alleged and set forth; and which assessment is in words and figures as follows, to-wit:

Assessment Book of the Property of Los Angeles County for the Year 1898. *Assessed to All Owners When Known, and When Unknown to Unknown Owners.*

4 10393.

Taxpayer's name.	Description of property in the city of Los Angeles, real estate other than city and town lots subd. of section or metes and bounds, city and town lots, improvements, personal property.	City or town lots		Value of city and town lots.	Total value of all property after deductions.	Total State and county tax.	Total tax.	1st installment tax on personal property and half of real estate.	15% penalty.	Second installment, remainder on real estate.
		Lot.	Blk.							
Daniel Givens..	University Addition.	34	....	$135	$135	$1.80	$1.80	$.90	$.13	$.90

5 IV.

That the taxes purported to be assessed against the lot of land purported to be described in said assessment were $1.80. That the only penalties which are claimed by the said defendant as chargeable under the said assessment are as follows, to-wit:

15 per cent penalty on first half of said $1.80, $.13; 5 per cent penalty on second half of said $1.80 $.04; advertising $.50; penalties for delinquency under Sec. 3817 of Political Code, $.71; and interest from date of the purported sale to the state of California, as hereinafter alleged, to February 11, 1905, $1.

V.

That on a day, to-wit, the 3rd Monday of May, 1899, the tax collector of said county of Los Angeles, made his purported delinquent list and delinquent assessment book, including the same matter as was contained in said purported assessment set out in para-

graph IV of this amended complaint; and in addition thereto the following matters: "5 per cent $.04; adv. $.50; total tax and penalty $2.51."

VI.

That thereafter the tax collector of said county caused to be published in the "Evening Express," only on June 3rd, 10th, 17th and 24th, 1899 (but which paper was, during all the month of June, 1899, published and issued daily), a copy of said delinquent
6 tax list, together with a notice that, unless the taxes, delinquent as appeared by said list together with the costs and penalties, were paid, that said tax collector would, at the office of the county tax collector in the courthouse in the city of Los Angeles, on Saturday, July 1, 1899, at the hour of 10 a'clock A. M., sell all said real estate upon which taxes are a lien, to the state of California.

VII.

That thereafter on said first day of July, 1899, at 10 o'clock A. M. in the tax collector's office of said county of Los Angeles, state of California, said tax collector stated that all of the property assessed and delinquent as embraced in said delinquent tax list, and described thus: "In Los Angeles city, University Add., lot 34," was by operation of law and by the declaration of such tax collector, sold to the state of California, as purchaser, for the sum of $2.51; and the said tax collector thereupon on the same day issued his purported certificate of such sale, reciting the matters hereinabove in this paragraph alleged; and also that said real estate was subject to redemption pursuant to the statute in such cases made and provided, and that, unless said real estate was redeemed within five years, the purchaser thereof would be entitled to a deed thereof on the 2nd of July, 1904; and such purported certificate was thereafter
7 on September 26, 1899, recorded in the office of the county recorder of said county.

VIII.

That thereafter the county tax collector of said county of Los Angeles executed his purported deed of property described as situate, lying and being within the county of Los Angeles, state of California; "in Los Angeles city, University Add., lot 34;" and which purported deed also contained the same recitals as were contained in said purported certificate of sale, and also recited that "no person had redeemed the property aforesaid during the time allowed by law for its redemption, and the time for redeeming said property has expired, and the same has not been redeemed, nor any part thereof;" and said tax collector, by the terms of said deed, for the purported consideration of $2.51, purported to grant, bargain, sell, convey and confirm unto the state of California all said lot, piece or parcel of land described as last aforesaid, to-wit, the property situate, lying and being within the county of Los Angeles, state of

California; "in Los Angeles city, University Add., lot 34;" and which said purported deed was acknowledged by said tax collector in his official capacity, and was thereafter on July 19, 1904, filed and copied as of record in book 2121, page 207 of records of deeds in the office of the county recorder of said county of Los Angeles.

8 IX.

That prior to the making of the purported sale and deed hereinafter alleged, to-wit, in Dec. 1904, a pretended estimate of the amount of taxes, penalties, and interest, and of the amount required to purchase the said property from the state, was furnished by the county auditor of said county of Los Angeles, to said tax collector; and which estimate contained a statement of all sums which were in any manner due, or which were claimed by any person to be due as taxes upon the lot of land described in the said estimate, and which were then unpaid; and which estimate also included a statement of all penalties, interest and costs, which were in any manner due or which were claimed by any person to be due upon such property, computed to February 11th, 1905; and the said estimate was the only statement of the amount of taxes, penalties, interest and costs furnished to said tax collector upon which the said pretended sale is founded. The said estimate is in words and figures as follows, to-wit:

"No. 10292. Book 2, Page 42.

Estimate of the Amount Required to Purchase from the State the within Described Real Estate, Which was Sold to the State on the 1st day of July, 1899, for the Delinquent Taxes of 1898.

Assessed to Daniel Givens.

Description of real estate, in Los Angeles city, University Add., lot 34.

9 Delinquent state and county taxes of 1898	$1.80
Penalties for delinquency	.71
Interest on the above amounts from date of sale	1.00
Delinquent state and county taxes of 1900	1.60
Penalties for delinquency	.70
Interest on the above amounts from July 1, 1901	.60
Delinquent state and county taxes of 1901	1.68
Penalties for delinquency	.71
Interest on the above amounts from July 1, 1902	.45
Delinquent state and county taxes of 1902	1.44
Penalties for delinquency	.69
Interest on the above amounts from July 1, 1903	.26
Delinquent state and county taxes of 1903	1.50
Penalties for delinquency	.69
Interest on the above amounts from July 1, 1904	.11

Delinquent state and county taxes of 1904	1.40
Penalties for delinquency	.10
Taxes due	$15.44
Cost of publication	.75"
	$16.19

That the only amounts claimed by the said tax collector, and by said defendant, to have been assessed as taxes or charged as
10 penalties, costs or interest against said property for said years 1898, 1900, 1901, 1902, 1903 and 1904, respectively, or for any other years, for which taxes were unpaid, or in any manner connected with the pretended sale hereinafter alleged, were the said sums specified in the said foregoing estimate, so furnished by said county auditor to said county tax collector.

X.

That the only pretended authorization to make sale of such property as described in said alleged deed to said state of California, as furnished to said tax collector by the controller of said state of California, is in words and figures as follows, to-wit:

"Controller's Department, State of California.

To the Tax Collector of the County of Los Angeles, State of California:

Whereas, on various dates there were filed and recorded in the controller's office of the state of California, certain deeds conveying to the people of the state of California, the title to those certain lots and parcels of land hereinafter described:

And, whereas, said deeds recite the fact that said property hereinafter described was struck off and sold to the people of the state of California for the non-payment of state and county taxes, penalties and costs, and all charges levied and assessed against said
11 property for the years 1879, 1881, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898;

And, whereas, five years have elapsed since the date of said sale, and no redemption, according to law, has been made of said property, or any part thereof;

Now, therefore, in pursuance of the law in such cases made and provided, I, E. P. Colgan, controller of the state of California, by virtue of the authority in me vested by the laws of this state, do by these presents authorize, empower, and direct you, the said tax collector, to sell at public auction, in separate lots and parcels, the property hereinafter described, in the manner following: Public notice shall first be given of such sale by publication for at least three weeks in some newspaper published in the county, or city and county, or if there be no newspaper published therein, then by posting a notice in three conspicuous places in the county, or city

and county, for the same period, which notices must state specifically the place of, and the day and hour of sale, and shall contain a description of the property to be sold, and shall also embody a copy of this authorization.

The property above referred to and hereby authorized to be sold is situate, lying and being in the county of Los Angeles, state of California, bounded and particularly described as follows, to-wit:

12 (Property Sold to the State July 1, 1899, for Taxes of 1898.)

In Los Angeles city, University Add., lot 34.

That no bid shall be received or accepted at such sale for less than the amount of all the taxes, levied upon such property, and all interest, costs, penalties, expenses up to the date of the sale hereby authorized, together with all such subsequent taxes as may have been levied upon such property, up to the date of the issuance to the state of the deed or deeds hereinabove referred to, with all interests, costs, penalties and other charges thereon added to such subsequent taxes.

That such sale shall be conducted in all respects as by law governing such sales.

Given under my hand and seal of office, at Sacramento, this 3rd day of January, A. D. 1905.

E. P. COLGAN, *Controller.*"

XI.

That thereafter the tax collector of said county, claiming to act under the authorization as set forth in paragraph X hereof, caused to be published a notice that he would, on Saturday, February 11, 1905, at 10 o'clock A. M., at the Broadway entrance to the court house of said Los Angeles county, sell at public auction to the highest bidder, for cash, in lawful money of the United States, the property purported to be described in said authorization as follows, to-wit:

13 "In Los Angeles city, University Add., lot 34; tax, $9.42; penalties and costs, $3.60; interest to date of sale, $2.42; cost of advertising, $.75; total amount due, $16.19;" which said notice was published for four insertions only, viz., on January 20th and 27th, 1905, and on February 3rd and 10th, 1905, and only in the "Los Angeles Daily Journal," which was, during said period, a newspaper, published daily in said city of Los Angeles.

XII.

That on said 11th day of February, 1905, said tax collector offered for sale the property as described in the said authorization and in said last mentioned notice; and at the time of offering such property for sale announced to the persons in attendance thereat,

that the person who would pay the largest sum of money for said whole property would be the successful bidder at such sale; that thereupon said defendant, George Zobelein, bid the sum of $166 for said whole property, and no higher bid having been made, the said tax collector thereupon declared said whole property sold to the said George Zobelein; and said defendant then paid said sum of $166 to said tax collector, which last named officer thereupon paid the same into the hands of the county treasurer of said county of Los Angeles, for the benefit of the said State of California, and of the said county of Los Angeles, between whom said whole
14 sum of money was apportioned, and by whom it has all been used for public purposes. That said tax collector thereupon, claiming to act for and on behalf of the state of California, on the 11th day of February, 1905, executed to said George Zobelein a pretended deed, which deed is in words and figures as follows, to-wit:

"This indenture of deed, made and entered into this 11th day of February, 1905, between W. O. Welch, tax collector of the county of Los Angeles, state of California, party hereto of the first part, and Geo. Zobelein, party hereto of the second part, witnesseth:

That, whereas, the property first hereinafter described was liable and subject to taxation and levy was duly made thereon for taxes due to the state of California, and to the county of Los Angeles, for the fiscal year 1898; and at the time of the sale to the state of California hereinafter mentioned, said taxes and costs amounting to the sum of two and 51/100 dollars remained wholly due and unpaid;

And, whereas, upon the 1st day of July, 1899, the county tax collector struck off and sold to the state of California the property first hereinafter described, for the sum of two and 51/100 dollars, the amount of said delinquent taxes and costs, due notice having first been given by publication as by law required, of the time and place when said property would be sold to satisfy the lien of
15 said delinquent taxes. The property in said publication mentioned and hereby conveyed to the party of the second part herein is situate, lying and being in the county of Los Angeles, state of California, and described as follows, to-wit:

In Los Angeles city, University Add., lot 34.

And, whereas, upon consummation of the sale to the state of California, above mentioned, the county tax collector duly executed his certificate of sale as by law required, which certificate was dated on the 1st day of July, 1899, the day of the sale, and recited that unless the said real estate was redeemed within five years from the date of the sale to the state, the purchaser thereof would be entitled to a deed thereof on the 2nd day of July, 1904, and which certificate was duly filed and recorded in the office of the county recorder as number 1040 of certificates of sale for the year 1898.

And, whereas, the time provided by law for the redemption of said property having expired on the 2nd day of July, 1904, and no redemption thereof having been made, W. O. Welch, the then tax collector as aforesaid, did as by law required execute to the state of

California, on the 2nd day of July, 1904, a deed of conveyance of, in and to the aforesaid property, and said deed was duly filed and recorded in the office of the county recorder of said Los Angeles county, and in the office of the controller of the state of
16 California, whereby the state of California became the owner of the said property herein described.

And, whereas, in pursuance of the written authorization of the controller of the state, dated the 3rd day of January, 1905, W. O. Welch, tax collector as aforesaid, caused due notice to be given of the sale of said property at public auction, by publishing notice thereof for at least three weeks in a newspaper published in said county, to-wit: in the "Los Angeles Daily Journal," which notice stated specifically the place of, and the day and hour of sale, to-wit: at the Broadway entrance of the courthouse of the said county of Los Angeles, at 10 o'clock a. m., on the 11th day of February, 1905, and which notice contained a description of the property to be sold, and embodied a copy of the controller's authorization;

And, whereas, on the day fixed for the said sale, to-wit: the 11th day of February, 1905, said property was duly offered for sale at public auction, and George Zobelein, the party of the second part herein, did then and there bid for said property, the sum of one hundred and sixty-six dollars; said sum being not less than the amount of all taxes levied upon said property, and all interest, costs, penalties and expenses up to the date of such sale; and said sum being the highest and best bid received, said W. O. Welch,
17 tax collector aforesaid, struck off and sold to said Geo. Zobelein the property hereinbefore in this indenture of deed described;

Now, therefore, this indenture of deed witnesseth: That for and in consideration of the sum of one hundred and sixty-six dollars to me in hand paid, the receipt whereof is hereby acknowledged I, W. O. Welch, as tax collector aforesaid, by virtue of and in pursuance of the statutes in such case made and provided, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm unto the aforesaid Geo. Zobelein, party hereto of the second part, all the certain lot, piece or parcel of land so sold, and hereinbefore in this indenture of deed described, as fully and absolutely as I, as tax collector aforesaid, may or can lawfully sell and convey the same.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, as well in law as in equity.

To have and to hold all and singular the herein described premises, together with the appurtenances thereof, unto the said party hereto of the second part, and to his heirs and assigns forever.
18 In witness whereof, I have hereunto set my hand and seal in the county of Los Angeles, the day and year first above written.

[SEAL.] W. O. WELCH,

Tax Collector of the County of Los Angeles."

That said deed was acknowledged before the county clerk of said county and was thereafter filed and copied as of record in book 2220, page 261, of records of deeds in the office of the county recorder of said county of Los Angeles.

XIII.

That said tax collector did not, in offering said property for sale to the "highest bidder" at said last mentioned purported sale, make any statement that the person who would pay the amount claimed to be due as taxes, penalties and costs, for the least quantity of land, would be the highest bidder; nor did he at such sale offer to sell the least portion of said property to the person who would pay the said amount of $16.19, which was the aggregate amount of taxes, penalties, costs and charges, claimed by the said tax collector to be due upon the property so offered for sale.

XIV.

That the said property described in paragraph I of this complaint was, at the time of said pretended sale, to-wit, on the 11th day of February, 1905, of the reasonable and market value of $500; that the value of said property on said last mentioned date was greatly in excess, to-wit, to the extent of more than $480, of any
19 sum either due or claimed to be due by the tax collector of said county of Los Angeles, as taxes, costs, penalties and charges thereon; and that if the said tax collector had stated that the "highest bidder" at such sale would be the person who would take the least quantity of the land so offered for sale, and pay the amount of taxes, penalties, costs and charges claimed as due thereon; or had offered to sell the least portion of said property to the person who would pay the said amount of $16.19, which was so claimed by said tax collector to be the amount then due as taxes, costs, interest, penalties and charges upon said property, that the sale of a small portion only of said whole lot of land would have sufficed to have produced sufficient money with which to satisfy such claim for taxes, penalties, costs and charges; and that said lot was and is capable of being divided and sold in parts.

XV.

That the said proceedings of said tax collector and the pretended sale and deed of said whole property for said sum of $166, when the whole amount of taxes, penalties, interest, costs and charges, claimed to be due thereon, did not exceed $16.19; and when a sale of a less quantity than the whole of said land would have sufficed to produce said sum of $16.19; and without said tax collector having first offered to sell the least portion or quantity of said land to the
20 person who would pay the amount of taxes, interest, penalties, costs and charges, claimed to be due thereon, were, and are void, upon the following grounds:

(*a*) That such attempted sale of said whole property to the person who would pay the largest sum of money therefor is in violation of the provisions of section 1, article XIII of the constitution of the state of California, which provides that taxation must be equal, in the following words: "All property in the state * * * shall be taxed in proportion to its value, to be ascertained as provided by law."

(*b*) That the said attempted sale of said whole property constitutes an attempted taking of plaintiff's said property without due process of law, and is in violation of that portion of the fourteenth amendment to the constitution of the United States which provides that: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of * * * property without due process of law.

(*c*) That said attempted sale of said whole property to the person who would pay the largest sum of money therefor is in violation of that portion of the fourteenth amendment to the constitution of the United States which provides: "No state shall make or en-
21 force any law which shall deny to any person within its jurisdiction the equal protection of the laws."

(*d*) That said attempted sale of said whole property to the person who would pay the largest sum of money therefor, and for an amount in excess of the sum either due or claimed to be due thereon, is in violation of that portion of the fifth amendment to the constitution of the United States, which provides that: "No person shall * * * be deprived of * * * property, without due process of law; nor shall private property be taken for public use without just compensation."

(*e*) That the said purported sale is in violation of that portion of the fifth amendment to the constitution of the U. S., which provides that: "Private property shall not be taken for public use without just compensation; and of the provision of Sec. 14, Art. I of the constitution of the state of California, which provides that: "Private property shall not be taken * * * for public use without just compensation having been first made to, or paid into court for the owner."

XVI.

That said pretended deeds so made to said defendant, George Zobelein, is, under the statute of said state of California, made conclusive evidence of some of said tax proceedings, and prima facie evidence of all of said tax proceedings; that said pretended sale and deed to said George Zobelein cast a cloud upon plaintiff's
22 title to the said lot of land described in paragraph I of this complaint. That said tax collector never had the power or authority to sell or offer for sale the plaintiff's whole tract of land to the person who would pay therefor the largest sum of money, and without regard to the amount of taxes due thereon and that all of the acts of said officer in that behalf were improvidently and unlawfully done, and for that reason the said pretended sale and deed

to said defendant are void; but that notwithstanding such fact the said deed so made to said defendant purports on its face to convey the title of said property to the defendant; and that it will require evidence aliunde the said proceedings, assessment, notices of sale, certificate of sale, auditor's estimate, and controller's authorization, and the said deeds, to remove said cloud from the title of plaintiff's said land.

XVII.

That on the 19th day of March, 1908, and prior to the filing of this amended and supplemental complaint, the said plaintiff offered and tendered payment to the county tax collector of said county, to the county treasurer of said county, and to the county auditor of said county, of said sum of $16.19, and in addition thereto offered to pay to said officers any and all other sums of taxes, interest, penalties, costs and charges, which were due or claimed to be due, or which were, or appear to be charged upon said property, but the amounts of such other taxes, interest, penalties, costs or charges, if any, were then and have ever since been unknown to the plaintiff; but that said offers and tenders were refused.

And said plaintiff on the same date offered and tendered payment to the said defendant of said sum of $16.19, with interest thereon at the rate of 7 per cent per annum from said 11th day of February, 1905, viz., the sum of $3.55, in all, $19.74; said plaintiff also at the same time offered to pay to said defendant any and all other sums which he had expended as taxes on said property, since the 11th day of February, 1905, and interest on any such other sums of taxes which said defendant might have paid, at the rate of 7 per cent per annum from the dates of such payments; but that said offer and tender was refused.

That the plaintiff was, on March 19th, 1908, ready, able and willing to pay said respective amounts so tendered as above alleged; and that he has been, at all times since said 19th day of March, 1908, and still is ready, able and willing to pay said respective amounts, so tendered, to any persons entitled thereto, in the event that the court should hold said defendant, or either of said officers above named, entitled to receive such sums of money; and the said plaintiff hereby offers to do equity in the premises, and to do and perform any further acts which the court may deem necessary in the premises, in order that complete justice may be done between the parties to the action.

Wherefore, plaintiff prays judgment herein that said defendant, George Zobelein, be required to set forth the nature of his claim to an estate or interest in, or lien upon said land and premises; that by said judgment the title of the plaintiff to said land and premises be quieted, and that the adverse claims of said defendant be determined; that it be adjudged that plaintiff is the owner in fee simple, and entitled to the possession of the whole of said land and premises, and that the defendant has no estate, right, title or interest in or to, or lien upon said land and premises, or any part thereof; that the title of said plaintiff to said lot of land be quieted against

all claims, demands or pretensions of whatsoever nature, asserted by said defendant thereto; that said defendant and all persons claiming or to claim the said premises through or under him be perpetually debarred and restrained from asserting any claim whatever in or to said lot of land or lien thereon adversely to the plaintiff; that said pretended deed issued to said defendant, and the said record thereof in the office of the county recorder, and all other papers and proceedings under which said defendant asserts any title to said land and premises adverse to the plaintiff be decreed to be void and cancelled, and that said purported deed so issued to said
25 defendant be delivered to the clerk of this court and by him cancelled; and in the event that the court should hold that said original assessment is valid, that the plaintiff be held entitled to redeem the said property from the said sale made to said state of California, pursuant to the terms of Sec. 3817 of the Political Code of said state.

And that plaintiff have such other and further relief in the premises as may seem meet and agreeable to equity; and for costs of suit.

CHARLES LANTZ,
Attorney for Plaintiff.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Charles Lantz, being duly sworn, deposes and says, that he is the attorney for the above named plaintiff, who is now absent from said county of Los Angeles; that affiant has knowledge of the facts and for the foregoing reasons makes this verification for and on behalf of the plaintiff; that affiant has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated upon information or belief, and that as to those matters that he believes them to be true.

CHARLES LANTZ.

Subscribed and sworn to before me this 21st day of March, 1908.
[SEAL.] LAUREL WILLIAMS,
Notary Public in and for the County of Los Angeles, State of California.

26 Endorsed: Received copy of the within amendment & supplemental complaint this 23rd day of March, 1908. Edw. F. Wehrle. attorney for defendant. Filed Mar. 23, 1908. C. G. Keyes, clerk; by A. W. Francisco, deputy.

[Title of Court and Cause.]

Answer to Amended and Supplemental Complaint.

Comes now the defendant George Zobelein, and for answer to the amended and supplemental complaint on file herein, denies and alleges as follows, to-wit:

I.

Denies that the plaintiff in said action above or otherwise named, is now, or for a long or any time heretofore, or at all, has been the owner in fee simple, or otherwise, or at all, or entitled to the possession of that certain lot, piece or parcel of land situate, lying and being in the city of Los Angeles, county of Los Angeles state of California, bounded and particularly described as follows, to-wit:

Lot thirty-four (34) of the University Addition Tract, according to map thereof recorded in book 15, page 46, of miscellaneous records of said Los Angeles county, or any part thereof..

27 Denies that the plaintiff is, or ever has been the owner of said property, or any part thereof; and denies that plaintiff is now, or ever has been, entitled to the possession thereof, or to any part thereof.

II.

Defendant admits that defendant claims an interest and estate in said land or premises adverse to the plaintiff; and alleges that he, the said defendant, is the owner in fee simple of said lot 34 of said University Addition Tract aforesaid, and that the correct description thereof is lot 34 of the University Addition, as per said map.

Denies that the claim of this defendant is without right or any right, title or interest whatever in said premises or any part or parcel thereof, and denies that the defendant does not own any estate, right, title or interest whatever in or to, or lien upon, the said land or premises, or any part thereof, but alleges that the defendant is the owner in fee *to* said premises and each and every part and parcel thereof, and is entitled to the possession thereof.

III.

Defendant admits that one of the claims of defendant is based upon a tax deed executed by the tax collector of said Los Angeles county on or about the 11th day of February, 1905, to the said defendant, which said deed was thereafter delivered to the defendant herein, and duly recorded; alleges that said tax deed was

28 so executed and delivered to the defendant herein by said tax collector of said Los Angeles county pursuant and in accordance with the proceedings duly and regularly had under the laws of the state of California regulating the assessment and collection of taxes and the sale of property thereunder for failure of the owners to pay taxes duly and regularly assessed under said laws of the state of California.

Admits that one of the claims of said defendant George Zobelein to an estate or interest in or to, or lien upon said land and premises is based upon an assessment and tax sales and deeds of said property, and that said assessment is in the words and figures set out in a copy of said assessment book contained in paragraph III of the amended and supplemental complaint herein, at lines 7 to 23, inclusive, on page 2 of said amended and supplemental complaint.

IV.

Denies that said assessments are as set out in said amended and supplemental complaint, to-wit: "15 per cent penalty on first half of said $1.80, $.13: 5 per cent penalty on second half of said $1.80. $.04; advertising, $.50; penalties for delinquency under Sec. 3817 of Political Code, $.71; and interest from date of the purported sale to the state of California, as hereinafter alleged, to February 11, 1905, $1.," except as hereinafter alleged. Denies that in the
29 original assessment of said property the letters "Tct" follow the words University Addition or Add.

Defendant alleges that on the — day of ——, 1899, and within the time required by law, the tax collector of said county of Los Angeles duly made a delinquent list and delinquent assessment book as required by law, and that said delinquent assessment book of the property of Los Angeles county for the year 1899 was and is in the words and figures following, to-wit:

Delinquent Assessment Book of the Property of Los Angeles County for the Year 1898, Assessed to All Owners when Known and when Unknown to Unknown Owners.

10292.

30

Taxpayer's name.	Description of property, real estate other than city and town lots, subd. of sections or metes or bounds, city and town lots, improvements, personal property.	City or town lots.		Value of city and town lots.	Total value of all property after deductions.	State and county tax.	Total tax.	First payment.	15 per cent.	5 per cent.	Second payment.	Five per cent.	Adv.	Total tax and penalty.	Remarks.
		Lot.	Blk.												
Daniel Givens.....	University Add.	34	.....	$135	$135	$1.80	$1.80	$.90	$.13	$.04	$.90	$.04	$.50	$2.51	.....

31 V.

Defendant admits that thereafter the tax collector of said Los Angeles county caused to be published in the "Evening Express" on June 3rd, 1899, June 10th, 1899, June 17th, 1899, and June 24th, 1899, a copy of said delinquent tax list, and alleges that said notice was in the words and figures following, to-wit:

"Delinquent Tax List in and for County of Los Angeles, State of California, for State and County Taxes for the Year 1898.

"STATE OF CALIFORNIA,
County of Los Angeles, ss:

"Default having been made in the payment of taxes due to the state of California, and the county of Los Angeles for the year ending June 30, 1899, upon the property described in the delinquent tax list hereunto appended.

"Now, therefore, I, John H. Gish, tax collector in and for the said county of Los Angeles, by virtue of authority in me vested by law, hereby give public notice that unless the taxes delinquent as appears by said list, together with the costs and penalties, are paid, I, as said tax collector, at the office of the county tax collector in the court house in the city of Los Angeles, on Saturday, the 1st day of July, 1899, at the hour of 10 o'clock a. m., will sell all said real estate upon which taxes are a lien to the state of California.

32 "Signed and dated at the city of Los Angeles, this 3rd day of June, 1899.

JOHN H. GISH,
"County Tax Collector of Los Angeles County, California."

Number.	Name and Description.	Amount.
10292.	Daniel Givens. University Addition. Lot 34.	251.

Dollars and Cents.

Public notice is hereby given that the figures appearing opposite, following and last after each description of property in the foregoing 'Delinquent Tax List for 1898 of and for the county of Los Angeles' were intended to and do represent respectively in dollars, or in cents, or in dollars or cents, as the case may be, the amount due for taxes and costs, in the manner as follows, to-wit: when or where two figures appear therein, cents were intended to be and are represented; when or where more than two figures there appear therein, cents were intended to be and are represented by the last two figures, and the figures occupying and appearing at the left of the said last two figures and separated therefrom by a space were

intended to and do represent dollars; so that the amount due for taxes and costs in the respective cases aforesaid are thus expressed in dollars and cents.

JOHN H. GISH,
Tax Collector, Los Angeles County, California."

33 VI.

Defendant admits that thereafter, on said first day of July, 1899, at 10 o'clock a. m., in the tax collector's office of said county of Los Angeles, state of California, said tax collector sold all of the property assessed and delinquent as embraced in said delinquent tax list, to-wit, the property described thus: "In Los Angeles city, University Add., lot 34," was by operation of law and by the declaration of such tax collector sold to the state of California as purchaser, for the sum of $2.51, and that on the same day said tax collector issued a certificate of such sale, reciting said matters, which said certificate defendant alleges was and is in the words and figures following, to-wit:

"No. 10292. 1898.
Vol. 2. Page 42.

"*Certificate of Sale of Real Estate Sold for Non-payment of State and County Taxes for the Year* 1898.

"STATE OF CALIFORNIA,
County of Los Angeles, ss:

"I, John H. Gish, at the time of the publication and sale hereinafter mentioned, and now, the tax collector of the county of Los Angeles, state of California, hereby certify that by virtue of, and in conformity with the provisions of the Political Code of the state of California, levy was duly made according to law upon the property of which description is first hereinafter given, for taxes
34 due to the state of California, and to the county of Los Angeles, for the year 1898, together with costs and charges due thereon.

"That said property was assessed according to law in the year A. D. 1898, for the year 1898, at one hundred and thirty-five dollars, to Daniel Givens, and the same was liable and subject to taxation; that said taxes were levied upon said property and its value was equalized as required by law. The amount of the tax so levied on said property was the sum of one and 80-100 dollars, as follows: for county purposes, the sum of $1 14-100, for state purposes, the sum of $66-100 and the penalties, costs and charges which have since accrued thereon, amount to the further sum of $71-100. That said taxes were not and had not been paid, and at the time of sale hereinafter mentioned still remained wholly due and unpaid. That I did on the third Monday in May, 1899, deliver to the auditor of the county of Los Angeles a complete delinquent list of all persons and property then owing taxes in said Los Angeles county, to

the state of California and to the county of Los Angeles, together with the penalties, costs and charges due thereon, which list included the property first hereinafter described. That publication of the intention to sell for said taxes, penalties, costs and charges was made as provided by law, and in said publication, which was entitled 'The Delinquent Tax List for 1898,' was given the names of the
35 owners, when known, of all the real estate described in said list, together with such a condensed description of such real estate that it could have been easily known, and also a similar condensed description of such real estate assessed to unknown owners; and also the names of every party delinquent for any tax on personal property, and also opposite each name and description the amount of taxes, including penalties, costs and charges, as provided by law, due from each delinquent person or property, with the taxes due on personal property, the delinquent state, poll, road and hospital tax, the taxes due each school, road or other lesser taxation district, added to the taxes on real estate, where real estate was liable therefor, or where the several taxes were due from the same person; and said publication was made by one insertion one time per week for three successive weeks in a supplement to the "Evening Express," a newspaper published in the said county of Los Angeles, to-wit, at the city of Los Angeles therein; one on the 3rd day of June, 1899, one on the 10th day of June, 1899, one on the 17th day of June, 1899, and one on the 24th day of June, 1899, and said publication did designate the day and hour when the property would, by operation of law, be sold to the state, which sale (to-wit, upon the first day of July, 1899, at the hour of 10 o'clock a. m. of said day), was not less than twenty-one nor more than
36 twenty-eight days from the time of the first publication of said delinquent notice; and did designate the place of said sale, which place so designated was in the tax collector's office of said Los Angeles county.

"That there was appended and published with said delinquent list a notice that unless the taxes delinquent, together with the costs and penalties, were paid, the real property upon which such taxes were a lien would be sold.

"That on the day and hour fixed for the sale, to-wit, on the first day of July, 1899, at the hour of 10 o'clock a. m., in the tax collector's office of said county of Los Angeles, state of California, all the property assessed and delinquent as aforesaid, situate, lying and being within the said county of Los Angeles, state of California, and described thus:

"In Los Angeles city, University Add., lot 34, was by operation of law and by my declaration, as such tax collector, sold to the state of California, as purchaser, in pursuance of law in such case made and provided, for the amount of said taxes of every kind charged against said property and penalties, costs and charges, towit, the sum of two and 51-100 dollars, whereby the state of California became the purchaser of the above described piece or parcel of land so sold as aforesaid; and I do further certify that the said real estate

last aforesaid was sold for taxes and subject to redemption
37 pursuant to the statute in such cases made and provided; and unless the said real estate is redeemed within five years from the date of the sale to the state, the purchaser thereof will be entitled to a deed thereof, on the 2nd day of July, 1904.

"Given under my hand this first day of July, 1899. John H. Gish, tax collector of Los Angeles county; by H. G. Dow, deputy."

VII.

Alleges that said certificate was duly filed and recorded in the office of the county recorder of said Los Angeles county as numbers 1040 of certificates of sale for the year 1898, and in the office of the state controller, as required by law.

VIII.

Admits that thereafter the county tax collector of said Los Angeles duly executed a deed of said property to the state of California, pursuant to the laws of the state of California, and alleges that said deed was and is in the words and figures following, to-wit:

"No. 10292. 1898.

"Conveyance of Real Estate Sold for Non-payment of State and County Taxes for the Year 1898.

"This indenture, made and entered into this 2nd day of July, in the year of our Lord one thousand nine hundred and four, between W. O. Welch, tax collector of the county of Los Angeles, state
38 of California, party hereto of the first, and the state of California, party hereto of the second part,

"Witnesseth: That whereas, it is true that at the time of the levy, publication, and sale hereinafter mentioned, John H. Gish was the tax collector of the county of Los Angeles, state of California; and that by virtue of and in conformity with the provisions of the Political Code of the state of California, levy was duly made according to law upon the property, of which description is first hereafter given, for taxes due to the state of California, and to the county of Los Angeles, for the year 1898, together with the costs and charges due thereon;

"That said property was assessed according to law in the year A. D. 1898, for the year 1898, at one hundred thirty-five dollars, to Daniel Givens, and the same was liable and subject to taxation; that said taxes were levied upon said property, and its value was equalized as required by law. That the amount of the tax so levied on said property was the sum of one and 80-100 dollars, as follows: for county purposes, the sum of $1 14-100; for state purposes, the sum of $66-100; that the amount of said tax was segregated into installments in accordance with law, and the costs and charges which have since accrued thereon amount to the further sum of $71-100. That

both installments of said taxes were not and had not be
39 paid, and at the time of sale hereinafter mentioned still r
mained wholly due and unpaid;

"And, whereas, said John H. Gish, as tax collector aforesaid, di
on the third Monday in May, 1899, deliver to the auditor of th
county of Los Angeles a complete delinquent list of all persons an
property then owing taxes in said Los Angeles county, to the sta
of California, and to the county of Los Angeles, together with th
penalties, costs and charges due thereon, which list included th
property first hereinafter described; that publication of the intentio
to sell for said taxes, penalties, costs and charges was made as pr
vided by law, and in said publication, which was entitled 'The D
linquent Tax List for 1898,' was given the names of the owner
when known, of all the real estate described in said list, together wi
such a condensed description of such real estate that it could hav
been easily known, and also a similar condensed description of suc
real estate assessed to unknown owners, and also the names of ever
party delinquent for any tax on personal property, and also opp
site each name or description the amount of taxes, including pena
ties, costs and charges as provided by law due from each delinque
person or property with the taxes on personal property, the deli
quent state, poll, road, and hospital tax, the taxes due each schoo
road, or other lesser taxation district, added to the taxes o
40 real estate, where real estate was liable therefor, or where th
several taxes were due from the same person; and said publ
cation was made by one insertion one time per week for three su
cessive weeks in a supplement to the 'Evening Express,' a newspap
published in the city and county of Los Angeles, to-wit, at the cit
of Los Angeles therein; and said insertions were made and publishe
one on the 3rd day of June, 1899, one on the 10th day of Jun
1899, one on the 17th day of June, 1899, and one on the 24th da
of June, 1899, and said publication did designate the day and hou
when the property would, by operation of law, be sold to the stat
which sale (to-wit: upon the first day of July, 1899, at the hour o
10 o'clock a. m. of said day) was not less than twenty-one nor mo
than twenty-eight days from the time of the first publication of sai
delinquent notice, and did designate the place of said sale, whic
place so designated was in the tax collector's office of said Los Angel
county;

"That there was appended and published with said delinquent li
a notice that unless the taxes delinquent, together with the costs an
penalties, were paid, the real property upon which such taxes were
lien would be sold;

"That on the day and hour fixed for the sale, to-wit: on the 1
day of July, 1899, at the hour of 10 o'clock a. m., in the tax co
lector's office of said county of Los Angeles, state of Californi
41 all the property assessed and delinquent as aforesaid, situat
lying and being within the county of Los Angeles, state o
California, and described thus: In Los Angeles city, Universit
Add., lot 34, was, by operation of law and the declaration of sai
tax collector, sold to the state of California, as purchaser, in pu

suance of law in such cases made and provided, to pay said taxes of every kind charged against said property, together with the penalties, costs, and charges due thereon, to-wit: the sum of two and 51-100 dollars, whereby the state of California became the purchaser of the above described piece or parcel of land so sold as aforesaid; that the real estate last aforesaid was sold for taxes and subject to redemption pursuant to the statute in such cases made and provided;

"And, whereas, no person has redeemed the property aforesaid during the time allowed by law for its redemption, and stated in the certificate of sale therefor;

"And, whereas, said certificate stated that unless the said real estate was redeemed within five years from the date of the sale to the state, the purchaser thereof would be entitled to a deed thereof, on the 2nd day of July, 1904, that said certificate of sale bears date the 1st day of July, 1899, the day of the said sale;

"And, whereas, the time for redeeming said property has
42 expired, and the same has not been redeemed, nor any part thereof;

"Now, therefore, this indenture witnesseth: That in consideration of the premises and of the sum of two and 51-100 dollars, I, W. O. Welch, as tax collector aforesaid, by virtue and in pursuance of the statutes in such cases made and provided, have granted, bargained, sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey, and confirm, unto the aforesaid, the state of California, all that lot, piece or parcel of land so sold, and hereinbefore and last described in this deed, as fully and absolutely as I, tax collector aforesaid, may or can lawfully sell and convey the same.

"Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, as well in law as in equity.

"To have and to hold all and singular the hereinbefore and last mentioned and described premises, together with the appurtenances thereof, unto the said state of California, the said party of the second part, and to its assigns forever.

"In witness whereof, I have hereunto set my hand and seal in the county of Los Angeles, aforesaid, the day and year first hereinabove written.
43

W. O. WELCH,
Tax Collector of the County of Los Angeles."

Alleges that said deed was thereafter duly acknowledged by said tax collector, and recorded on July 19, 1904, in Vol. 2121, page 207 of deeds, records of Los Angeles county, California, and in the office of the controller of the state of California.

IX.

Admits the allegations of paragraph IX of the amended and supplemental complaint herein, except that said estimate contains the

statement that said property was sold for $166 instead of the footing of $16.19, as shown in said paragraph.

Alleges that said estimate was duly and regularly issued by the auditor of said Los Angeles county, and was thereafter duly recorded, and that said estimate had a memorandum made thereon that the property therein described had been sold to George Zobelein for $166.

X.

Admits all of the allegations contained in paragraph X of said amended and supplemental complaint, and alleges that said controller's authorization was duly and regularly issued by said controller according to law.

XI.

Admits all of the allegations contained in paragraph XI
44 of the amended and supplemental complaint herein, and alleges that the tax collector of said Los Angeles county duly gave the notice required by law of the sale of said property, and that said notice was and is in the words and figures following, to-wit:

"Notice.

CONTROLLER'S DEPARTMENT,
State of California:

To the tax collector of the county of Los Angeles, State of California:

"Whereas, on various dates there were filed and recorded in the controller's office of the state of California, certain deeds conveying to the people of the state of California, the title to those certain lots and parcels of land hereinafter described;

"And, whereas, said deeds recite the fact that said property hereinafter described was struck off and sold to the people of the state of California for the non-payment of state and county taxes, penalties and costs, and all charges levied and assessed against said property for the years 1879, 1881, 1887, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898;

And, whereas, five years have elapsed since the date of said sale, and no redemption, according to law, has been made of said property, or any part thereof;

"Now, therefore, in pursuance of the law in such cases made and provided, I, E. P. Colgan, controller of the state of California, by virtue of the authority in me vested by the laws of this state,
45 do by these presents authorize, empoyer and direct you, the said tax collector, to sell at public auction, in separate lots and parcels, the property hereinafter described, in the manner following: Public notice shall first be given of such sale by publication for at least three weeks in some newspaper published in the county, or city and county, or if there be no newspaper published therein,

en by posting a notice in three conspicuous places in the county, city and county, for the same period, which notices must state ecifically the place of, and the day and hour of sale, and shall con- n a description of the property to be sold, and shall also embody a py of this authorization.

"The property above referred to and hereby authorized to be sold, situate, lying and being in the county of Los Angeles, state of lifornia, bounded and particularly described as follows, to-wit:

"(*Property Sold to the State July* 1, 1899, *for Taxes of* 1898.)

"In Los Angeles city, University Add., lot 34.

"That no bid shall be received or accepted at such sale for less an the amount of all the taxes levied upon such property, and all erest, costs, penalties and expenses up to the date of the sale reby authorized, together with all such subsequent taxes as may have been levied upon such property, up to the date of the issuance to the state of the deed or deeds hereinabove referred to, with all interests, costs, penalties and other charges thereon ded to such subsequent taxes.

"That such sale shall be conducted in all respects as by law gov- ning such sales.

"Given under my hand and seal of office, at Sacramento, this 3rd y of January, A. D. 1905.

E. P. COLGAN, *Controller.*"

XII.

Admits all of the allegations of paragraph XII of the amended d supplemental complaint herein.

XIII.

Defendant alleges that the purchaser, the party of the second part med in said tax deed, is the defendant herein.

XIV.

Admits the allegations of paragraph XIII of said amended and pplemental complaint herein.

XV.

Defendant alleges that he has not sufficient knowledge, informa- n or belief, or either, to enable him to answer the allegations, or y of the allegations contained in paragraph XIV of the amended d supplemental complaint, and basing his denial upon said ounds denies all and singular, each and every of the allegations ntained in said paragraph XIV of said amended and supplemental mplaint.

47 XVI.

Denies that the proceedings of said tax collector, and the pretended sale of the whole property for said sum of $166, when the whole amount of taxes, penalties, interest, costs and charges, claimed to be due thereon, did not exceed $16.19, and when a sale of a less quantity than the whole of said land would have sufficed to produce said sum of $16.19, and without said tax collector having first offered to sell the least portion or quantity of land to the person who would pay the amount of taxes, interest, penalties, costs and charges, claimed to be due thereon, were and are void; but alleges that each and every of the said proceedings are legal and in conformity with the laws of the state of California in such cases made and provided.

Denies that said attempted sale of said whole property to the person who would pay the largest sum of money therefor is in violation of the provisions of section 1, article XIII of the constitution of the state of California, or any other provision or provisions of said constitution.

Denies that said attempted or any sale of said property so made, or otherwise, or at all, or attempted to be made, constitutes a taking of plaintiff's said property without due process of law; and denies
48 that the same, or any part thereof, is in violation of any portion of the fourteenth amendment to the constitution of the United States or of any other provisions of said constitution.

Denies that sale of the whole of said property to the person who would pay the largest sum of money therefor is in violation of any of the provisions of the constitution of the United States.

XVII.

Denies that said tax collector of Los Angeles county never had power or authority to sell or offer for sale the plaintiff's whole tract of land to the person who would pay therefor the largest sum, without regard to the amount of taxes due thereon; and denies that all or any of the acts of said officer in that behalf were improvidently or unlawfully done; and denies that said sale and deed, or sale or deed, are void; denies that it will require evidence aliunde the said proceedings, assessment, notices of sale, certificate of sale, auditor's estimate and controller's authorization and the said deed to determine the rights of the parties hereto in and to said property.

XVIII.

Defendant has not sufficient knowledge, information or belief, or either, to enable him to answer the allegations, or any of the allegations in said amended and supplemental complaint contained, "that on the 19th day of March, 1908, and prior to the filing of this amended and supplemental complaint, the said plaintiff offered
49 and tendered payment to the county tax collector of said county, to the county treasurer of said county, and to the county auditor of said county, of said sum of $16.19, and

in addition thereto offered to pay to said officers any and all other sums or taxes, interest, penalties, costs and charges, which were due or claimed to be due, or which were, or appear to be charged upon said property, but the amounts of such other taxes, interest, penalties, costs or charges, if any, were then and have ever since been unknown to the plaintiff, but that said offers and tenders were refused," and basing his denial upon said grounds, denies all and singular, each and every of said allegations, and denies that said lot is and was or is or was capable of being divided and sold in parts or divided or sold in parts.

XIX.

Defendant further alleges that there is now, and that at all times since March 26, 1887, there has been, a definite tract of land in the county of Los Angeles known by the name "University Addition" in said county of Los Angeles; that on or about said 26th day of March, 1887, a survey and map of said University Addition was made, and said map was duly recorded in the office of the county recorder of said Los Angeles county on said 26th day of March, 1887, and ever since said date has been, was at all of the times herein mentioned and now is on record in the said recorder's office aforesaid; that said lot 34 hereinabove described and referred to constitutes a known and certain subdivision of said University Addition aforesaid, to-wit: that one certain lot, and no more, in said University Addition, according to said map aforesaid, is numbered "34."

Wherefore, defendant prays that plaintiff take nothing by this action, and that by decree of this court it be established that defendant is the owner in fee simple of said lot and every part and parcel thereof, and for his costs.

EDW. F. WEHRLE,
Attorney for Defendant.

Duly verified.

Endorsed: Received copy of the within answer this 29th day of Jan'y, 1909. Chas. Lantz, attorney for pl'ff. Filed Jan. 29, 1909. C. G. Keyes, clerk; by E. G. Riggins, deputy.

[Title of Court and Cause.]

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial on the 29th day of January, 1909, upon the amended and supplemental complaint of plaintiff and the answer to the amended and supplemental complaint of defendant, before the court sitting without a jury, Charles Lantz, Esq., appearing as attorney for the plaintiff, and Edw. F. Wehrle, Esq., appearing as attorney for the defendant Zobelein. Whereupon evidence both oral and documentary was offered on behalf of the plaintiff and the said defendant, and the

cause was argued and submitted to the court for its decision, and the court having fully considered the same now finds the following facts:

I.

That the plaintiff is not now the owner of the property described in the amended and supplemental complaint herein, or entitled to the possession thereof, or any part or parcel thereof, which said property is that certain lot, piece or parcel of land situate, lying and being in the city of Los Angeles, county of Los Angeles, state of California, bounded and described as follows: Lot 34 of the University Addition tract, according to a map thereof recorded in book 15, page 46 of miscellaneous records of said county.

II.

That the plaintiff is not now and never has been the owner of said property, and that the plaintiff is not now and has never been entitled to the possession thereof.

III.

That the claim of the defendant Zobelein is not without right, and that the allegations contained in paragraph II of the amended and supplemental complaint, "that the claims of said defendant are unfounded, and without any right whatsoever and that said
52 defendant does not own any estate, right, title or interest whatever in or to, or lien upon, the said land or premises, or any part thereof," are and each of said allegations is untrue.

That the allegations contained in paragraph II of the answer of said defendant to the amended and supplemental complaint, "that the defendant is the owner in fee to said premises and each and every part and parcel thereof, and is entitled to the possession thereof," are and each of said allegations is true.

That the allegations contained in said paragraph II of the said answer that "the said defendant is the owner in fee simple of said lot 34 of said University Addition tract aforesaid, and that the correct description thereof is lot 34 of the University Addition as per said map," are and each of said allegations is true.

IV.

That the allegation contained in said amended and supplemental complaint that one of the claims of said defendant, George Zobelein, to an interest in and to said lot is based upon a tax deed executed by the tax collector of Los Angeles county on or about the 11th day of February, 1905, to the defendant herein, which said deed was thereafter delivered to the defendant herein and duly recorded, and that the allegation in the answer to the amended and supplemental complaint herein that said tax deed was so executed
53 by said tax collector pursuant to and in accordance with proceedings duly and regularly had under the laws of the state

of California regulating the assessment and collection of taxes and the sale of property for failure of the owners to pay taxes duly and regularly assessed under said laws of said state of California, are, and each of said allegations is true.

V.

That the allegation contained in paragraph IV of the answer to the amended and supplemental complaint, that on the — day of ——, 1899, and within the time required by law, the tax collector of said county of Los Angeles, duly made a delinquent list and delinquent assessment book as required by law of the property in Los Angeles county for the year 1899, and that said delinquent assessment book of the property of Los Angeles county for the year 1899 was and is in the words and figures set out in said paragraph IV of the said answer are, and each of said allegations is true.

VI.

That the allegation contained in defendant's answer to the amended and supplemental complaint, that the delinquent tax list referred to and set out in paragraph V of the said answer was and is in the words and figures set out in said paragraph V of said answer, is true.

54

VII.

That on the first day of July, 1899, the tax collector of Los Angeles county, California, issued a certificate of sale in the words and figures of that certain certificate numbered 10292 set out in paragraph V of the answer to the amended and supplemental complaint.

VIII.

That the allegation contained in said answer to the amended and supplemental complaint, "that said certificate was duly filed and recorded in the office of the county recorder of said Los Angeles county as number 1040 of certificates of sale for the year 1898, and in the office of the state controller, as required by law," is true.

IX.

That the allegation contained in paragraph VIII of the answer to the amended and supplemental complaint that said deed referred to the deed of the county tax collector covering the property therein described, which deed was and is in the words and figures set out in paragraph VIII of said answer, is true.

X.

That the allegation contained in said answer to said amended and supplemental complaint, "that said deed was thereafter duly ac-

knowledged by said tax collector, and recorded on July 19, 1904, in Vol. 2121, page 207 of deeds, records of Los Angeles county,
55 California, and in the office of the controller of the state of California," is true.

XI.

That the allegation contained in the answer to the amended and supplemental complaint, "that said estimate was duly and regularly issued by the auditor of said Los Angeles county, and was thereafter duly recorded, and that said estimate had a memorandum made thereon that the property therein described had been sold to George Zobelein for $166," is true.

XII.

That the allegation contained in the answer to the amended and supplemental complaint, that said controller's authorization referred to in paragraph X of said amended and supplemental complaint was duly and regularly issued by said controller according to law, is true.

XIII.

That the allegation contained in paragraph XI of the said answer to the amended and supplemental complaint, that the tax collector of said Los Angeles county duly gave the notice required by law of the sale of said property, is true; and that said notice was and is in the words and figures set out in said paragraph XI of said answer, is true.

XIV.

That the allegation contained in paragraph XIII of said
56 answer to the amended and supplemental complaint, "that the purchaser, the party of the second part named in said tax deed, is the defendant herein," is true.

XV.

That the allegations contained in paragraph XV of the amended and supplemental complaint, "that the proceedings of said tax collector and the pretended sale of the whole property for said sum of $166, when the whole amount of taxes, penalties, interest, costs and charges claimed to be due thereon did not exceed $16.19, and when a sale of a less quantity than the whole of said land would have sufficed to produce said sum of $16.19, and without said tax collector having first offered to sell the least portion or quantity of said land to the person who would pay the amount of taxes, interest, penalties, costs and charges claimed to be due thereon, were and are void, upon the following grounds:

"(*a*) That such attempted sale of said whole property to the person who would pay the largest sum of money therefor is in violation

of the provisions of section 1, article XIII of the constitution of the state of California, which provides that taxation must be equal, in the following words: 'All property in the state * * * shall be taxed in proportion to its value, to be ascertained as provided by law.'

"(*b*) That the said attempted sale of said whole property
57 constitutes an attempted taking of plaintiff's said property without due process of law, and is in violation of that portion of the fourteenth amendment to the constitution of the United States which provides that: 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of * * * property without due process of law.'

"(*c*) That said attempted sale of said whole property to the person who would pay the largest sum of money therefor, is in violation of that portion of the fourteenth amendment of the constitution of the United States, which provides: 'No state shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws.'

"(*d*) That said attempted sale of said whole property to the person who would pay the largest sum of money therefor, and for an amount in excess of the sum either due or claimed to be due thereon, is in violation of that portion of the fifth amendment to the constitution of the United States, which provides that 'No person shall * * * be deprived of * * * property, without due process of law; nor shall private property be taken for public use without just compensation.'

"(*e*) That said purported sale is in violation of that portion of the fifth amendment to the constitution of the United States,
58 which provides that: 'Private property shall not be taken for public use without just compensation;' and with the provisions of section 14 of article I of the constitution of the state of California, which provides that: 'Private property shall not be taken * * * for public use without just compensation having been first made to or paid into court for the owner'" are and each of said allegations is untrue.

XVI.

That the allegation contained in the answer to the amended and supplemental complaint, that each and every of said proceedings are legal and in conformity with the laws of the state of California in such cases made and provided, is true.

XVII.

That the allegations contained in paragraph XVI of the amended and supplemental complaint, "That said pretended deed so made to said defendant, George Zobelein, is, under the statute of said state of California, made conclusive evidence of some of said tax proceedings, and prima facie evidence of all of said tax proceedings; that said pretended sale and deed to said George Zobelein cast a cloud upon

plaintiff's title to the said lot of land described in paragraph I of this complaint. That said tax collector never had the power or authority to sell or offer for sale the plaintiff's whole tract of land to the person who would pay therefor the largest sum of
59 money, and without regard to the amount of taxes due thereon and that all of the acts of said officer in that behalf were improvidently and unlawfully done, and for that reason the said pretended sale and deed to said defendant are void; but that notwithstanding such fact the said deed so made to said defendant purports on its face to convey the title of said property to the defendant; and that it will require evidence aliunde the said proceedings, assessment, certificate of sale, notices of sale, auditor's estimate, and controller's authorization, and the said deeds, to remove said cloud from the title of plaintiff's said land," are, and each of said allegations is untrue.

XVIII.

That the allegations contained in paragraph XIX of the answer to the amended and supplemental complaint, "that there is now, and that at all times since March 26, 1887, there has been, a definite tract of land in the county of Los Angeles known by the name of 'University Addition' in said county of Los Angeles; that on or about said 26th day of March, 1887, a survey and map of said University Addition was made, and said map was duly recorded in the office of the county recorder of said Los Angeles county on said 26th day of March, 1887, and ever since said date has been, was at all of the times herein mentioned and now is on record in the said recorder's office aforesaid; that said lot 34 herein-
60 above described and referred to constitutes a known and certain subdivision of said University Addition aforesaid, to-wit: that one certain lot, and no more, in said University Addition, according to said map aforesaid, is numbered '34'," are and each of the allegations therein contained is true.

Conclusions of Law.

And as conclusions of law from the foregoing facts the court finds as follows:

(1) That the defendant is the owner in fee simple of the property described in the amended and supplemental complaint and the answer thereto.

(2) That the defendant is entitled to a decree that he is the owner of said premises as against said plaintiff.

That the plaintiff take nothing by his action, and that the defendant recover his costs of suit in this behalf expended.

Dated Jan'y 14, 1910.

WALTER BORDWELL, *Judge.*

Endorsed: Received copy of the within this 25th day of Oct., 1909. Charles Lantz. Filed Jan. 14, 1910. C. G. Keyes, clerk; by A. W. Francisco, deputy.

61 [Title of Court and Cause.]

Decree.

This cause came on regularly for trial on the 29th day of January, 1909, upon the amended and supplemental complaint of plaintiff and the answer to the amended and supplemental complaint of the defendant Zobelein, before the court sitting without a jury, Charles Lantz, Esq., appearing as attorney for plaintiff, and Edw. F. Wehrle, Esq., for the defendant George Zobelein. Whereupon evidence both oral and documentary was offered on behalf of said parties, and the cause was argued and submitted to the court for its decision, and the court having made its findings and decision, and caused the same to be filed in favor of the defendant George Zobelein and against the plaintiff.

Now therefore, in accordance with the law and the findings aforesaid, it is hereby ordered, adjudged and decreed as follows, to-wit:

(1) That the defendant Zobelein is the owner of and entitled to the possession of all of that certain real property described in the amended and supplemental complaint, to-wit, all that certain lot, piece or parcel of land situated, lying and being in the city of Los Angeles, county of Los Angeles, state of California, and bounded and described as follows, to-wit: Lot thirty-four (34) of the
62 University Addition tract, according to a map thereof recorded in book 15, page 46 of miscellaneous records of said Los Angeles county.

(2) That the plaintiff take nothing by this action.

(3) That the defendant George Zobelein have and recover of and from the plaintiff his costs in this behalf expended, taxed at $—.

Dated Jany. 14, 1910.

WALTER BORDWELL, *Judge.*

Endorsed: Received copy of the within this 25th day of Oct. 1909. Charles Lautz. Filed Jan. 14, 1910. C. G. Keyes, clerk; by A. W. Francisco, deputy. Docketed Jan. 14, 1910, entered Jan. 14, 1910, book 198, page 106; by Geo. E. Ross, deputy clerk. Judgment roll filed and entered Jan. 14, 1910; in book 198, page 106. C. G. Keyes, clerk; by R. H. Jackson, deputy.

[Title of Court and Cause.]

Statement on Motion for New Trial.

Be it remembered that the above entitled cause came on for trial on the 29th day of January, 1909, before the court, without a jury, whereupon the following proceedings were had:

The plaintiff offered and read in evidence stipulation between the parties as follows:

63 "It is hereby stipulated by and between the plaintiff above named and the defendant, George Zobelein, that on the first day of March, 1897, Daniel Givens was the owner of title in fee of

lot 34, of the University Addition tract, in the city of Los Angele county of Los Angeles, state of California, according to map recorde in book 15, page 46, of miscellaneous records of said county, an described in the complaint in said action.

That in November, 1897, said Daniel Givens died intestate, an that under decrees of distribution, and by deeds, the plaintiff abov named has succeeded to such title as was held by said Daniel Given in said property at the time of his death."

Whereupon the plaintiff rested.

The defendant thereupon offered in evidence:

The assessment set out in paragraph III of Plaintiff's amende and supplemental complaint.

The delinquent assessment set out in paragraph IV of defendant answer to the amended and supplemental complaint.

Delinquent tax list set out in paragraph V of said answer.

Certificate of sale set out in paragraph VI of said answer, that sai certificate was filed and recorded in the office of the county recorde of said county.

Deed of tax collector to state of California as set out in paragrap VIII of said answer.

64 Estimate of county auditor for which property was to b sold as set out in paragraph IX of said complaint, excep that said estimate contains the statement that the property therei described was sold to the defendant for $166.

Notice of sale and controller's authorization, as set out in para graph XI of said answer, all of which were admitted and read i evidence.

The defendant thereupon offered in evidence deed from W. C Welch, as tax collector, to George Zobelein, dated Feb. 11, 1905, a set out in paragraph XII of plaintiff's said complaint, which sai deed was recorded in the office of the county recorder, to which las mentioned offer the plaintiff objected upon the ground that such deed was incompetent, irrelevant and immaterial; that no founda tion was laid therefor; that said purported deed was void upon it face, for the reason that it did not show any warrant or authoriza tion in law for issuing same, and that it recited a sale for an ex cessive amount; which objections were overruled by the court, t which ruling the plaintiff then and there excepted, and said dee was thereupon received and read in evidence.

C. L. LOGAN, sworn as a witness on the part of the defendant testified, in substance, as follows:

65 I am the county recorder of Los Angeles county, Cali fornia, and as such have charge of the records of deeds an the miscellaneous records of said county; I have examine the records of my office and find therein only one map of the Uni versity Addition tract, which map appears recorded in book 15 page 46, of miscellaneous records; that said map was recorded March 26, 1887, and at all times since said date has been, and now is, public record in Los Angeles county.

F. D. LANTERMAN, sworn as a witness on the part of the defendant, testified in substance as follows:

I am a surveyor and made a survey of the tract known as the University Addition, in Los Angeles, California, and the map recorded in book 15, page 46 of miscellaneous records of Los Angeles county, is the map of the survey so made by me. There is one lot, and no more, in said tract, numbered 34.

The defendant thereupon offered the said map in evidence, to which offer the plaintiff objected upon the grounds that the same was incompetent, irrelevant and immaterial, or for the purpose of adding to or strengthening the tax deed relied upon by defendant, which objections were overruled by the court, to which ruling plaintiff excepted and said map was thereupon received and read in evidence.

Defendant thereupon testified that the correct description
66 of the lot in question and herein concerned is lot 34 of the University Addition, as per map thereof recorded in book 15, page 46, of miscellaneous records of said county.

Whereupon the defendant rested.

B. L. BATES was sworn as a witness on the part of the plaintiff in rebuttal, and testified as follows:

I am a resident of Los Angeles, California, and have been for five years past; I am in the real estate business, and have been for the last five years; I attended the tax sale on February 11, 1905, at which lot 34 of the University Addition, and other lots, were offered for sale; I know the location and size of lot 34, and have seen the lot; it has 40 feet front on 39th street, in the city of Los Angeles, by a depth of 130 feet.

Question by Mr. LANTZ: State the method announced and followed by the tax collector in conducting such sale.

Mr. WEHRLE: The question is objected to; and we object to any questions along that line, upon the grounds that the testimony, if given, would be incompetent, irrelevant and immaterial.

Mr. LANTZ: The plaintiff offers to prove by the testimony of this witness that the tax collector who conducted such sale, before commencing same, announced that he would sell the property offered to the person who would pay the largest sums of money
67 for the respective parcels of property to be offered; and did not make any different announcement; that he did not announce that the successful bidder would be the one who would pay the amounts charged for the least quantity of land; that the property was only offered for sale to the person who would pay the largest sums of money for the whole of the respective parcels; that if the collector had offered to sell the least portion of said lot 34 to the person who would have paid the amount charged thereon as taxes, penalties and costs, that the witness was then and there ready and willing to bid and pay the amount of $16.19, charged thereon, for a less amount of said lot than the whole; that he was willing to take either the northerly or easterly ten feet of the lot, and pay said

sum therefor; and that at the time of said sale the lot was w
between $500 and $600; and that the lot is capable of being divi
and sold in parts.

Mr. WEHRLE: We object to such evidence being received or
sidered on the ground that the same is incompetent, irrelevant
immaterial.

The COURT: Objection sustained.

Mr. LANTZ: The plaintiff excepts to the ruling.

R. W. CORE was sworn as a witness on behalf of the plain
and counsel for plaintiff offered to prove by the testimony of
witness that on March 19, 1908, he personally delivered
68 original of a written offer or tender to the defendant, Ge
Zobelein, which writing was as follows:

LOS ANGELES, CAL., Mar. 19, 190

To George Zobelein, Esq.:

I hereby offer and tender payment to you of the sum of $16
being the amount claimed by the tax collector of the county of
Angeles, state of California, as the amount due on February 1
1905, upon lot thirty-four, University Addition tract, Los Ang
California, as state and county taxes, and interest, charges,
and penalties thereon; and I also offer to pay to you interest on
sum of $16.19 at the rate of 7 per cent per annum from said
day of February, 1905, viz., the sum of $3.55, in all, $19.74; a
also offer to pay to you any and all sums which you have expen
as taxes on said property since the 11th day of February, 1905,
interest at the rate of 7 per cent per annum, upon any such
from dates of payment thereof; and in case you accept this
and tender you are hereby requested to execute the accompany
quitclaim deed to the undersigned, of any interest claimed t
held by you under the purported tax deed of said property,
to you on said 11th day of February, 1905.

(Signed) WILLIAM CHAPMAN,
By CHARLES LANTZ,
His Attorney in Fac

69 The plaintiff also offered to prove by the testimony of
witness that, at the same time, the witness produced $10
gold and offered to pay said Zobelein, therefrom, the amount
offered by the said writing, and also presented to said Zobele
form of deed and requested him to sign the same, which de
as follows:

"Grant Deed."

George Zobelein of Los Angeles county, California, in consid
tion of — dollars, to him in hand paid, the receipt of whic
hereby acknowledged, remises, releases and forever quit-claim
William Chapman of Los Angeles county, California, all that
property situate in the county of Los Angeles, state of Califo
described as follows:

Lot 34 of University Addition tract.

To have and to hold unto the said grantee, his heirs or assigns, forever.

Witness my hand this — day of March, 1909.

——— ———."

(Usual acknowledgment.)

Also, that Mr. Zobelein made no objection to the amount, sufficiency or form of such offers or demands, but he declined and refused to accept such money, or to execute such deed.

Mr. WEIDLE: We object to such evidence being received or considered, upon the grounds that the same is incompetent, irrelevant and immaterial.

70 The COURT: Objection sustained.

Mr. LANTZ: We reserve an exception.

CHARLES LANTZ was sworn as a witness on the part of the plaintiff, and the plaintiff offered to prove by the testimony of the witness that on March 19, 1909, on behalf of the plaintiff, who was then absent from the county of Los Angeles, that he personally delivered the originals of the following writings to the respective officers therein mentioned, and, at the same time, he personally made the respective offers, tenders to, and demands upon, the said several officers which are specified in the originals of the said respective writings, as follows, to-wit:

"Los Angeles, Cal., Mar. 19, 1909.

To John N. Hunt, as County Treasurer of the County of Los Angeles, State of California:

I hereby offer and tender payment to you of the sum of $10.10, being the amount claimed due on the 11th day of February, 1907, upon lot thirty-four, University Addition tract, Los Angeles, California, as state and county taxes, and interest, penalties, costs and charges thereon; and I also offer to pay to you any and all other sums which are due or are claimed to be due as taxes, interest, penalties, costs and charges upon said property for the redemption thereof; and I hereby request that you make out and issue to
71 the undersigned an appropriate receipt for said money, and certificate of redemption of said property from any claims thereon for such taxes.

WILLIAM CHAPMAN,
By CHARLES LANTZ,
His Attorney in Fact.

Received copy of the foregoing this 19th day of March, 1909, and the said offer and tender are refused.

JOHN N. HUNT,
County Treasurer as Aforesaid."

LOS ANGELES, CAL., Mar. 19, 1908.

To W. O. Welch, as County Tax Collector of the County of Los Angeles, State of California:

I hereby offer and tender payment to you of the sum of $16.19, being the amount claimed due on the 11th day of February, 1905, upon lot thirty-four, University Addition tract, Los Angeles, California, as state and county taxes, and interest, penalties, costs and charges thereon; and I also offer to pay to you any and all other sums which are due or are claimed to be due as taxes, interest, penalties, costs and charges upon said property for the redemption thereof; and I hereby request that you make out and issue to the undersigned an appropriate reec-ipt for said money, and certificate of redemption of said property from any claims thereon for such taxes.

WILLIAM CHAPMAN,
By CHARLES LANTZ,
His Attorney in Fact.

72 Received copy of the foregoing this 19th day of March, 1908, and said offer and tender are rejected.

W. O. WELCH,
County Tax Collector as Aforesaid.

LOS ANGELES, CAL., Mar. 19, 1908.

To H. G. Dow, as County Auditor of the County of Los Angeles, State of California:

I hereby offer and tender payment to you of the sum of $16.19, being the amount claimed due on the 11th day of February, 1905, upon lot thirty-four, University Addition tract, Los Angeles, California, as state and county taxes, and interest, penalties, costs and charges thereon; and I also offer to pay to you any and all other sums which are due or are claimed to be due as taxes, interest, penalties, costs and charges upon said property for the redemption thereof; and I hereby request that you make out and issue to the undersigned an appropriate receipt for said money, and certificate of redemption of said property from any claims thereon for such taxes.

WILLIAM CHAPMAN,
By CHARLES LANTZ,
His Attorney in Fact.

Received copy of the within this 19th day of March, 1908.

H. G. DOW,
County Auditor as Aforesaid.

73 Also, that, at the same time, he produced $50 in gold, and offered to pay therefrom any amounts which said respective officers, or either of them, might compute to be due, as taxes, upon said lot 34; that all said offers and tenders were refused, though no objections were made to the amount, sufficiency or form thereof.

Mr. WEHRLE: We object to such evidence being received or considered, upon the grounds that the same would be incompetent, irrelevant and immaterial.

The COURT: Objection sustained.

Mr. LANTZ: We reserve an exception.

Plaintiff also produced, offered and read in evidence a general power of attorney unrevoked of record, from William Chapman to Charles Lantz, dated May 6th, 1889, recorded July 1, 1899, in book 27, page 238 of records of powers of attorney of Los Angeles county, California.

The court thereupon made and filed its findings of fact and conclusions of law against the plaintiff and in favor of the defendant, as shown by the judgment roll in this cause.

That, thereafter, the plaintiff, within the time allowed by law therefor, gave and served upon the defendant and filed in said cause, notice of his intention to move said court for a new trial of the action upon a statement of the case; and his notice of intention specified that the said motion would be made upon the grounds of insufficiency of the evidence to justify the decision; that the decision is against law, and upon the ground of errors in law occurring at the trial and excepted to by the plaintiff; and the foregoing statement having been prepared pursuant to said notice of intention, is a statement of the case and of all the evidence, so far as the same is material upon said motion.

The plaintiff specifies the following particulars in which the evidence is insufficient to justify the findings and decision of the court:

1. The evidence is insufficient to justify findings I, wherein it is found that plaintiff is not now the owner of the property described in the amended and supplemental complaint.

2. The evidence is insufficient to justify finding II, wherein it is found that the plaintiff is not now and never has been the owner of the property described in the amended and supplemental complaint, or entitled to the possession thereof.

3. The evidence is insufficient to justify finding III, wherein it is found that the defendant is the owner in fee of the land and premises described in paragraph II of defendant's answer to said complaint, or the finding that the claims of the defendant are founded upon right.

4. The evidence is insufficient to justify finding IV, wherein it is found that the tax deed to the defendant was executed pursuant to, and in accordance with, proceedings duly and regularly had, under the laws of the state of California regulating the assessment and collection of taxes and the sale of property for failure of the owners to pay taxes duly and regularly assessed under the laws of the state of California.

5. The evidence is insufficient to sustain finding V, wherein it is found that the tax collector of the county of Los Angeles duly made delinquent list, or delinquent assessment book, as required by law, of the property in Los Angeles county, for the year 1899.

6. The evidence is insufficient to justify finding XI, wherein it is found that the estimate of said county auditor was duly and regularly issued, and, thereafter, duly recorded.

7. The evidence is insufficient to justify finding XII, wherein it is found that the controller's authorization, referred to in paragraph X of plaintiff's amended and supplemental complaint, was duly and regularly issued by said controller, according to law.

8. The evidence is insufficient to justify finding XIII, wherein it is found that the tax collector of said Los Angeles county duly gave the notice required by law of the sale of said property.

9. The evidence is insufficient to justify finding XV, wherein the allegations of paragraph XV of the amended and supplemental complaint are found to be untrue, viz: that the proceedings of said tax collector, and the pretended sale of the whole property for the sum of $166, when the whole amount of taxes, penalties, interest, costs and charges claimed to be due thereon did not exceed $16.19, and when a sale of a less quantity than the whole of said land would have sufficed to produce the said sum of $16.19, and without said tax collector having first offered to sell the least portion or quantity of said land to the person who would pay the amount of taxes, penalties, interest, costs and charges claimed to be due thereon, were and are, void upon the grounds set forth in subparagraphs "*a*" to "*e*," inclusive, as contained in said finding XV, and as alleged in paragraph XV of plaintiff's amended and supplemental complaint.

76

10. The evidence is insufficient to justify finding XVI, wherein the allegation contained in the answer to the amended and supplemental complaint, that each and every of said proceedings are legal and in conformity with the laws of the state of California, is found to be true.

11. The evidence is insufficient to justify finding XVII, wherein the allegations contained in paragraph XVI of the amended and supplemental complaint, are found to be untrue, viz: that the said pretended sale and deed to said Zobelein cast a cloud upon plaintiff's title to said lot of land, that said tax collector never had the power or authority to sell, or offer for sale, the plaintiff's whole tract of land to the person who would — the largest sum of money, and without regard to the amount of taxes due thereon, and that the acts of said officer, in that behalf, were improvidently and unlawfully done, and, for that reason, the said pretended sale and deed to said defendant are void, and wherein the other allegations of said paragraph XVI of said complaint are found to be untrue.

77

The decision of the court is against law in the following respects:

1. The court erred in holding that the defendant is the owner, in fee simple, of the property described in the amended and supplemental complaint and the answer thereto.

2. The court erred in holding that the defendant is entitled to a decree that he is the owner of said premises, as against the plaintiff.

3. The court erred in holding that the plaintiff take nothing by his action, and that the defendant recover his costs.

4. The court erred in giving and rendering judgment for the defendant, and against the plaintiff, as the same is given and rendered.

Said plaintiff further specifies the following errors in law occurring at the trial and excepted to by him:

78 (*a*) The court erred in sustaining defendant's objections to the offer to prove, by the witness, Bates, that the tax collector who conducted the purported sale, by or on behalf of the state to the defendant, before commencing same, announced that he would sell the property offered to the person who would pay the largest sums of money for the respective parcels of property to be offered; and did not make any different announcement; that he did not announce that the successful bidder would be the one who would pay the amounts charged for the least quantity of land; that the property was only offered for sale to the person who would pay the largest sums of money for the whole of the respective parcels; that if the collector had offered to sell the least portion of said lot 34 to the person who would have paid the amount charged thereon as taxes, penalties and costs, that the witness was then and there ready and willing to bid and pay the amount of $16.19, charged thereon, for a less amount of said lot than the whole; that he was willing to take either the northerly or easterly ten feet of the lot, and pay said sum therefor, and that at the time of said sale the lot was worth between $500 and $600; and that the lot is capable of being divided and sold in parts.

(*b*) The court erred in sustaining defendant's objections to the proofs and testimony offered to be furnished by the witness, R. W. Core.

79 (*c*) The court erred in sustaining defendant's objections to the proofs and testimony offered to be furnished by the witness, Lantz.

(*d*) The court erred in overruling plaintiff's objection to the offer in evidence of deed from tax collector to defendant.

The plaintiff presents the foregoing statement on motion for new trial of said cause, and moves the court to vacate the said judgment and decision and to grant said plaintiff a new trial of the action, upon the grounds of said notice of intention *and* above stated.

CHARLES LANTZ,
Attorney for Plaintiff.

The foregoing statement is correct and may be settled.

EDW. F. WEHRLE,
Attorney for Defendant.

The foregoing statement is hereby within the time allowed by law and agreed between counsel, settled and allowed as correct.

Dated this 14th day of July, 1910.

N. P. CONREY,
Judge of said Court.

Endorsed: Received copy of the within proposed statement this 3rd day of May, 1910. Edw. F. Wehrle, attorney for deft. Filed Jul. 14, 1910. C. G. Keyes, clerk; by E. G. Riggins, deputy.

80 Minutes Superior Court, Dept. 9, July 27, 1910.

Order Denying Motion for New Trial.

[Title of Cause.]

The defendant having moved the court for new trial upon the grounds stated in his notice of intentions now on file and the court having considered the same, it is ordered that said motion for new trial be and the same is hereby denied.

[Title of Court and Cause.]

Notice of Appeal.

To the Defendant Above Named and to Edward F. Wehrle, Esq., His Attorney, and to the Clerk of the said Court:

You will please take notice that the plaintiff in the above-entitled cause hereby appeals to the Supreme Court of the state of California, from the order denying plaintiff's motion for a new trial of the said cause made and entered in the minutes of the said court on the 27th day of July, 1910.

Dated this 26th day of September, 1910.

CHARLES LANTZ,
Attorney for Plaintiff.

Endorsed: Received copy of the within notice this 26 day of Sept., 1910. Edw. F. Wehrle, attorney for defendant. Filed
81 Sep. 26, 1910. C. G. Keyes, clerk; by E. G. Riggins, deputy.

Clerk's Certificate.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, C. G. Keyes, county clerk and ex-officio clerk of the Superior Court in and for said county, hereby certify that I have compared the foregoing transcript with the original papers in the above-entitled action now on file in my office, and that the same contains full, true and correct copies of the amended and supplemental complaint, answer to the amended and supplemental complaint, findings of fact and conclusions of law, decree, statement on motion for new trial, order denying motion for new trial, and notice of appeal, together with the endorsements on said papers and documents, as the same now appear on file in my office.

I further certify that an undertaking on appeal by the plaintiff from the order denying motion for new trial, in due form, has been properly filed in my office, within the time required by law.

In witness whereof I have hereunto set my hand and affixed the seal of said Superior Court, this — day of October, 1910.

C. G. KEYES, *Clerk.*
By —— ——, *Deputy.*

82 [Title of Court and Cause.]

Stipulation.

It is hereby stipulated and agreed by and between the respective counsel for plaintiff and defendant in the above-entitled action, that the foregoing printed transcript on appeal is correct and contains full, true and correct copies of the amended and supplemental complaint, answer to the amended and supplemental complaint, findings of fact and conclusions of law, decree, statement on motion for new trial, order denying motion for new trial and notice of appeal, together with the endorsements on said papers and documents, all of which papers and documents are a part of the files and records of the Superior Court.

And it is further stipulated that an undertaking on appeal by the plaintiff from the order denying motion for new trial, in due form, has been properly filed within the time required by law.

Dated this — day of October, 1910.

CHARLES LANTZ,
Attorney for Plaintiff and Appellant.
EDWARD F. WEHRLE,
Attorney for Defendant and Respondent.

83–86 Received copy of the within for the judge who tried the case, this 7th day of December, A. D. 1910.

C. G. KEYES, *County Clerk;*
By E. G. RIGGINS, *Deputy Clerk.*

Due service of the within, and receipt of a copy hereof, is hereby admitted this 7th day of December, A. D. 1910.

EDW. F. WEHRLE,
Attorney for Respondent.

87 In the District Court of Appeal, Second Appellate District, State of California.

Civil. No. 1098.

WILLIAM CHAPMAN, Plaintiff and Appellant,
vs.
GEORGE ZOBELEIN, Defendant and Respondent.

State of California, District Court of Appeals, Second Appellate District. Filed May 20, 1912. W. D. Shearer, Clerk, By H. C. Lillie, Deputy.

Action to quiet title. The complaint is in the usual form, alleging ownership in plaintiff. Defendant's title is based upon a tax sale to the state, followed by a deed to the state and a conveyance to him from the state.

All the points raised appear to have been determined adversely to appellant on a former appeal as herein entitled, reported in 152 Cal. 216.

As we understand appellant, he admits that all the proceedings whereby title to the property was vested in defendant were duly had and taken pursuant to the laws of California. His contention is that, conceding the lot was sold to the state for the delinquent tax of 1898 and no redemption thereof made within the time fixed therefor by law, by reason whereof the legal title to the lot was conveyed to the state, nevertheless the state had no power to sell and convey title to the entire lot for an amount in excess of that upon payment of which the owner of the lot was entitled to redeem the same before such sale made by the state. At the date of the sale to defendant the amount of the taxes, interest and penalties against the lot was $16.19. The state, however, in the manner provided by law, sold the entire lot for $166, and the sum of $149.81 in excess of the $16.19 accrued for taxes, interest and costs, and upon payment of which at any time before the sale plaintiff might have redeemed the lot (Sec. 3785*a*, Political Code), was paid into the public treasury and the owner of the lot received no compensation for that part of his lot which
88 it is claimed was unnecessary to be sold in order to collect the amount due on the property. Plaintiff alleged and at the trial offered evidence tending to prove that on the date of the sale made by the state to defendant the lot was reasonably worth $500 and that the witness would willingly have paid the $16.19 covering interest, penalties and taxes thereon, for a part thereof consisting of the easterly or northerly ten feet thereof, thus leaving the remainder of the lot to the owner. This evidence was excluded and the ruling is assigned as error. The points now presented are: (1) That the proceeding under which the owner of the lot was divested of title thereto and which resulted in a sale of the whole property for $166, when the proceeds from a sale of a less quantity would have sufficed to pay the amount of $16.19 due to the state, is unconstitutional by reason of being obnoxious to section one of article XIII of the constitution of the state of California, which provides that "all property in the state * * * shall be taxed in proportion to its value, to be ascertained as provided by law." (2) That the proceeding constituted a taking of plaintiff's property without due process of law, in violation of the fourteenth amendment to the constitution of the United States which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person * * * of property without due process of law." (3) That the sale of the whole property to the person who would pay the largest sum of money therefor was in violation of that portion of the fourteenth amendment to the constitution of the United States which provides that no state shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws;
89 and likewise in violation of that portion of the fifth amendment to the constitution of the United States which provides that "no person shall * * * be deprived of * * * property

without due process of law, nor shall private property be taken for public use without just compensation," and also in violation of the provision of section 14 of article I of the constitution of the state of California which provides that private property shall not be taken for public use without just compensation having been first made to or paid into court for the owner.

On the former appeal of this case, reported in 152 Cal., p. 221, the Supreme Court said: "The question of the power of the state to provide that the sale of its title after the expiration of the redemption period of five years shall be made for the highest price offered, regardless of the amount that may have accrued against the property for taxes, penalties, interest and costs, was fully considered in the case of Fox v. Wright, 152 Cal. 60, and it was there held that the state had such power." In the case of Young v. Patterson, 9 Cal. App. 471, this court said: "The sale vests the equitable and the deed the legal title of the land in the state. (Santa Barbara v. Savings Soc., 137 Cal. 463.) As against the state the property owner at the end of five years has forfeited all rights in the property, except the privilege accorded him by the statute of redeeming it at any time before the state actually enters, sells, or disposes of it. (Baird v. Monroe, 150 Cal. 560.)" (Sec. 3785*a*, Pol. Code.) In discussing the constitutionality of the statutory proceedings under consideration, the Supreme Court, in Fox v. Wright, supra, says: "We are unable to discover any constitutional objection which interposes and invalidates the state's title, and none has been pointed out. We are unable to see why the state may not obtain a title free
90 from all equities in the former owner at the expiration of five years as may a private citizen after foreclosure upon the mortgage when the period of redemption following such foreclosure has passed."

Whatever conclusion the higher courts may reach in considering the matter, this court deems itself bound by the authorities cited, and it is therefore unnecessary to enter upon any extended discussion of the constitutional question presented by appellant. So holding, it follows there was no error in the ruling of the trial court in excluding the evidence offered.

The order appealed from is affirmed.

SHAW, *J.*

We concur:

ALLEN, *P. J.*
JAMES, *J.*

Appeal from Superior Court of Los Angeles County. Hon. N. P. Conrey, Judge.

Appearances: Charles Lantz, for Appellant; Edward F. Wehrle, for Respondent.

91 In the Supreme Court of the State of California.

L. A. No. 2829.

WILLIAM CHAPMAN, Plaintiff and Appellant,
vs.
GEORGE ZOBELEIN, Defendant and Respondent.

Appeal from the Superior Court of Los Angeles Co., Hon. N. P. Conrey, Judge.

Petition for Hearing in the Supreme Court After Judgment of the District Court of Appeal.

Charles Lantz, Bullard Block, 156 N. Spring St., Los Angeles, Attorney for Plaintiff and Appellant.

Filed June 28, 1912. B. Grant Taylor, Clerk, by Wm. F. Traeger, Deputy.

92 In the Supreme Court of the State of California.

WILLIAM CHAPMAN, Plaintiff and Appellant,
vs.
GEORGE ZOBELEIN, Defendant and Respondent.

Petition for Rehearing in the Supreme Court After Judgment of the District Court of Appeal.

The plaintiff and appellant respectfully petitions that the above entitled cause be heard and determined by the Supreme Court. The action is one to quiet title. Respondent claims title through a tax deed from the state of California. It was shown that the land in litigation of the value of $500 or $600 was sold to pay a total charge of $16.19; that the officer conducting the sale did not offer the land in such manner that the party who would pay the total charges and take the least portion of the land could make a bid. The officer offered the entire tract as a whole for the largest sum obtainable. The land was sold for $166.00. No provision was made by law or otherwise for turning over the excess not due the state to the
93–97 owner of the land. A party was ready, able and willing at the sale to pay the entire sum charged upon the land and take either the northerly or easterly ten feet of the lot.

We insist that the construction given by the court upon this proceeding results in the taking of private property without due process of law. The power of the state to pass a law which would so result contravenes the fourteenth amendment to the constitution of the United States and upon this ground we ask that judgment be rendered in favor of the plaintiff and appellant.

Respondent's counsel, in his brief, relies upon the case of King v. Mullins, 171 U. S. 404. But that case, while not decided upon facts similar to our own, leads strongly to the conviction that our contention is correct. There the property owner received due notice of the proceeding, which was required to be given upon a hearing in court. The court certainly took the ground of being opposed to forfeitures such as are advocated by the respondent in our case.

The facts and the law involved herein are fully discussed in our brief on file where it has been shown that the provisions of the federal constitution have been violated, and we respectfully ask the court to consider it in connection with this petition.

Respectfully submitted,

CHARLES LANTZ,
Attorney for Plaintiff and Appellant.

* * * * * * *

98–102 Received copy of the within for the judge who tried the case, this 28 day of June, A. D. 1912.

H. J. LELANDE, *County Clerk,*
By E. G. RIGGINS, *Deputy Clerk.*

Due service of the within, and receipt of a copy hereof, is hereby admitted this 28 day of June, A. D. 1912.

EDW. F. WEHRLE,
Attorneys for Respondent.

103–108 In the Supreme Court of the State of California.

L. A. 2829. 2d Civ. 1098.

WILLIAM CHAPMAN, Plaintiff and Appellant,
vs.
GEORGE ZOBELEIN, Defendant and Respondent.

By the COURT:

The petition to have the above entitled cause heard and determined by this Court after judgment in the District Court of Appeal for the Second Appellate District is denied.

BEATTY, *C. J.*

July 19, 1912.

109 In the Supreme Court of the United States.

Original.

WILLIAM CHAPMAN, Plaintiff in Error,
vs.
GEORGE ZOBELEIN, Defendant in Error.

Assignment of Error.

Comes now the plaintiff in error in the above entitled cause, and avers and shows that in the record and proceedings in said cause, the District Court of Appeal- and the Supreme Court of the State of California, erred, to the grievous injury and wrong of the plaintiff herein, and to the prejudice and against the rights of the plaintiff in error in the following particulars, to-wit:

(1) The said District Court of Appeals and the Supreme Court erred in holding that under the agreed statement of facts in the case, as appears by stipulation of counsel, and under the Constitution of the United States, the plaintiff in error was not entitled to a judgment.

(2) The said District Court of Appeals and the Supreme Court erred in not reversing the judgment of the trial court, and in not giving to plaintiff in error his rights under the Constitution of the United States.

(3) The said District Court of Appeal- and the Supreme Court erred in holding that the defendand in error is entitled to a decree quieting title against the plaintiff in error.

(4) The said District Court of Appeal- and the Supreme Court erred in not reversing the order of the trial court sustaining the objections of the defendant in error to the receiving in evidence of the proposed testimony of the witness B. L. Bates, and the offer to prove by the testimony of said Bates that if the tax collector had offered to sell the least portion of said lot to the person who would pay the amount charged thereon as taxes, penalties, interest and costs, that he was then and there ready to bid and pay the
110 several amounts charged upon said lot for a less quantity than the whole of each thereof, viz.; that he would have been willing to take the northerly or easterly ten feet of said lot and to have paid the amount claimed charged thereon as taxes, interest, penalties and costs, i. e., $16.19 upon said Lot 34, for a deed of such northerly or easterly ten feet of said lot.

(5) The said District Court of Appeal- and the Supreme Court erred in not reversing the order of the trial court sustaining the objections of the defendant in error to the offer of the plaintiff in error to prove by the witness Bates the value of the said lot on February 11th, 1905, to be between $500. and $600., and that said lot was capable of being subdivided.

(6) The said District Court of Appeal- and the Supreme Court erred in not holding that the deed to the defendant in error covering

the land in litigation, was and is null and void for the reason that it was issued pursuant to a pretended sale.

That said last mentioned pretended sale, purported to be made to the "highest bidder," viz., to the person who would pay the greatest sum of money for said parcel of land. That the tax collector who conducted the said pretended sale, did not, in offering said property for sale, make any statement that the person who would pay the amount claimed to be due as taxes, penalties and costs for the least quantity of land would be the highest bidder; nor did he at such sale offer to sell the least quantity of said property to the person who would pay the said sum purported to be charged upon said land as taxes, penalties, costs and charges.

That said lot was at the time of said pretended sale, to wit, on the 11th day of February, 1905, of the reasonable and market value of between $500. and $600.; that the value of said lot, on said date was greatly in excess, towit, to the extent of more than $450., of any amount either due or claimed to be due as taxes, costs, penalties or charges thereon; that said parcel of land was capable of being subdivided; and that if said tax collector had stated that the "highest bidder" at such sale would be the person who would take
111 the least quantity of land so offered for sale, and pay the amount of taxes, penalties, costs and charges claimed as due thereon; or had offered to sell the least portion of said parcel of land to the person who would pay the said amount claimed by said tax collector to be due as taxes, costs, interest, penaltes and charges upon the said property, that the sale of a small portion only of said parcel of land, to-wit, the northerly or easterly ten feet of the said lot would have sufficed to have produced sufficient money with which to satisfy such claims.

That no provision has been made by law, or otherwise, to turn over to the owner of said parcel of land the difference between the amount actually due the state and county for taxes, penalties, costs and charges and the amount actually received at the sale, and that the whole of said excess has been turned into the State and County Treasuries.

That the said proceedings of said Tax Collector, and the pretended sale and deed of said whole parcel of land for the sum of $166., when the whole amount claimed by said tax collector to be due thereon as taxes, penalties, interest, costs and charges did not exceed $16.19; and when a sale of a less quantity than the whole of said lot of land would have sufficed to have produced said sum of $16.19; and without said tax collector having first offered to sell the least portion or quantity of said parcel of land to the person who would pay the amount of taxes, interest, penalties, costs and charges claimed to be due thereon; and without delivering to the owner of the lot the amount received over and above the amount due the State and County; and, also, that portion of Section 3897 of the Political Code of the State of California which purports to require such form of sale, upon which said pretended proceedings are based, were and are void upon the following grounds:

(a) That the said attempted sale of said whole property consti-

tutes an attempted taking of plaintiff's said property without due process of law, and is in violation of that portion of the
112 Fourteenth Amendment to the Constitution of the United States which provides that: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of * * * property without due process of law."

(*b*) That said attempted sale of said whole property to the person who would pay the largest sum of money therefor, is in violation of that portion of the Fourteenth Amendment to the Constitution of the United States, which provides: "No state shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws."

(*c*) That said attempted sale of said whole property to the person who would pay the largest sum of money therefor, and for an amount in excess of the sum either due or claimed to be due thereon is in violation of that portion of the Fifth Amendment to the Constitution of the United States, which provides that: "No person shall * * * be deprived of * * * property, without due process law; nor shall private property be taken for public use without just compensation."

(*d*) That the said purported sale is in violation of that portion of the Fifth Amendment to the Constitution of the United States which provides that: "Private property shall not be taken for public use without just compensation."

Wherefore, from these and other manifest errors appearing in the record, the said William Chapman, plaintiff in error, prays that the judgment of the District Court of Appeals and the Supreme Court of the State of California be reversed and set aside and held for naught, and that judgment be rendered for plaintiff in error, granting him his rights under the Constitution of the United States, and plaintiff in error also prays judgment for his costs.

CHARLES LANTZ,
DAVIS, LANTZ & WOOD,
Attorneys for Plaintiff in Error.

113–123 [Endorsed:] Original. In the Supreme Court of the United States. William Chapman, Plaintiff, vs. George Zobelein, Defendant. Assignment of Error. Filed Apr. 21, 1913. B. Grant Taylor, Clerk; by M. C. Van Allen, Deputy.

124 In the Supreme Court of the United States.

WILLIAM CRAWFORD, Plaintiff in Error,

vs.

GEORGE ROSECRANS, Defendant in Error.

Statement of Errors and Designation of Parts of the Record to be Printed.

To the clerk of the above-entitled court:

The plaintiff in error hereby states that he intends to rely on the following errors in the above entitled cause:

That the tax deed and proceedings leading up to it by which defendant in error claims title to the real estate in litigation were and are null and void for the reason that said deed was issued to defendant in error at a void and pretended sale, purported to be made to the "highest bidder" viz., to the person who would pay the greatest sum of money for the said parcel of land. That the tax collector who conducted the said pretended sale did not, in offering the property for sale, make any statement that the person who would pay the amount claimed to be due as taxes, penalties and costs for the least quantity of land would be the highest bidder; nor did he at such sale offer to sell the least quantity of said property to the person who would pay the said sum purported to be charged on the said land as taxes, penalties, costs and charges.

That said property, to wit, Lot 16 of the University Addition Tract, in Los Angeles, California, was at the time of said pretended sale, to wit, on the 15th day of February, 1895, of the reasonable market value of between $500 and $600; that the value of said Lot 16 on said date was greatly in excess, to wit, to the extent of more than $450 of any amount either due or claimed to be due as taxes, costs, penalties or charges thereon; that said parcel of land was capable of being subdivided; and that if said tax collector had

125½ stated that the "highest bidder" at such sale would be the person who would take the least quantity of land so offered for sale, and pay the amount of taxes, penalties, costs and charges claimed as due thereon; or had offered to sell the least portion of said parcel of land to the person who would pay the said amount claimed by said tax collector to be due as taxes, costs, interest, penalties and charges upon the said property, that the sale of a small portion only of the said parcel of land would have sufficed to have produced sufficient money with which to satisfy such claim.

That no provision has been made by law, or otherwise, to turn over to the owner of said parcel of land the difference between the amount actually due the state and county, for taxes, penalties, costs and charges, and the amount actually received at the sale, and that the whole of said excess has been turned into the state and county treasury.

That the said proceedings of said tax collector, and the pretended sale and deed of said whole parcel of land, for the sum of $120,

when the whole amount claimed by said tax collector to be due thereon as taxes, penalties, interest, costs and charges did not exceed $16.19; and when a sale of a less quantity than the whole of said lot of land would have sufficed to have produced said sum of $16.19; and without said tax collector having first offered to sell the least portion or quantity of said parcel of land to the person who would pay the amount of taxes, interest, penalties, costs and charges claimed to be due thereon; and without delivering to the owner of the lot the amount received over and above the amount due the state and county; and also, that portion of Section 3897 of the Political Code of the State of California which purports to require such form of sale upon which said pretended proceedings are based, were and are void upon the following grounds:

(*a*) That said attempted sale of said whole property constitutes an attempt to take the plaintiff's said property without due
125 process of law, and is in violation of that portion of the Fourteenth Amendment to the Constitution of the United States which provides that: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of * * * property without due process of law."

(*b*) That said attempted sale of said whole property to the person who would pay the largest sum of money therefor is in violation of that portion of the Fourteenth Amendment to the Constitution of the United States which provides: "No state shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws."

That the District Court of Appeal- and the Supreme Court of the State of California erred in not reversing the order of the trial court sustaining the objections of the defendant in error to the receiving in evidence of the proposed testimony of the witness B. L. Bates, and the offer to prove by the testimony of the said Bates that if the tax collector had offered to sell the least portion of said real estate to the person who would pay the amount charged thereon as taxes, penalties, interest and costs, that he was then and there ready to bid and pay the several amounts charged upon said real estate for a less quantity than the whole thereof, viz., that he would have been willing to take the Northerly or Easterly ten (10) feet of said real estate and to have paid the amounts claimed charged thereon, as taxes, interest, penalties and costs, i. e., $16.19, for a deed of such northerly or easterly ten feet.

That said District Court of Appeal- and Supreme Court of the State of California erred in not reversing the order of the trial court sustaining the objections of defendant in error to the offer of plaintiff in error to prove by the witness Bates the value of the said real estate on February 11th, 1905, to be between $500. and $600.,
126 and that said real estate was capable of being subdivided.

That said District Court of Appeal- and Supreme Court of the State of California erred in not holding that the plaintiff in error was the owner of the real estate in litigation; and that the judgment of the trial court resulted in depriving the plaintiff in

error of his property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

That said plaintiff in error has been deprived of his property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States for the reason, among others, that no provision has been made by the laws of the State of California, or otherwise, to turn over to the plaintiff in error, as owner of the land in litigation, the difference between the amount actually due the state and county for taxes, penalties, costs and charges, and the amount actually received at the sale, the whole of said excess having been turned into the state and county treasuries.

And the plaintiff in error hereby designates the following parts of the record which he thinks necessary for the consideration of the said errors: The transcript on appeal in the Supreme Court of the State of California, the petition for rehearing in said Supreme Court, the order denying said petition, the opinion of the District Court of Appeal- of the State of California, and the assignment of error.

Dated this 29th day of August, 1913.

CHARLES LANTZ,
DAVIS, LANTZ & WOOD,
ERNEST E. WOOD,
Attorneys for Plaintiff in Error.

127 [Endorsed:] 606-13/23757. In the Supreme Court of the United States. William Chapman, Plaintiff in Error, vs. George Zobelein, Defendant in Error. Statement of errors and designation of parts of the record to be printed. Received copy of the within Statement, etc., this 28th day of August, 1913. Edw. F. Wehrle, Attorney for Defendant in Error. Charles Lantz, Davis, Lantz & Wood, Ernest E. Wood, Attorneys for Plaintiff in Error.

128 [Endorsed:] File No. 23,757. Supreme Court U. S., October term, 1913. Term No. 606. William Chapman, Pl'ff in Error, vs. George Zobelein. Statement of errors relied upon and designation by plaintiff in error of parts of record to be printed, and proof of service of same. Filed Sept. 4, 1913.

Endorsed on cover: File No. 23,757. California Supreme Court Term No. 200. William Chapman, plaintiff in error, vs. George Zobelein. Filed June 17th, 1913. File No. 23,757.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

William Chapman,
Plaintiff in Error,
vs.
George Zobelein,
Defendant in Error.

No. 200

BRIEF OF PLAINTIFF IN ERROR.

ERNEST E. WOOD,
Attorney for Plaintiff in Error.
CHARLES LANTZ,
DAVIS, LANTZ & WOOD,
Of Counsel.

Parker & Stone Co., Printers, 233 New High St., Los Angeles, Cal.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

William Chapman,
Plaintiff in Error,
vs.
George Zobelein,
Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF CASE.

The action is one to quiet title. The usual allegations of ownership were made on behalf of the plaintiff and the defendant. In addition thereto the plaintiff alleged that the claim of title asserted by the defendant is based upon certain purported tax proceedings which appear set forth in paragraphs III to XII inclusive of the complaint [Tr. fols. 3-18]; that the tax officials had levied an assessment and tax upon the land in controversy for the year 1898 in the amount of $1.80, and upon said tax having been declared delinquent, and a purported deed having been made of the tax collector to the

state, after a so-called "sale" (which, by the statute, was to be made only to the state *by the declaration of the tax collector*—no competition being permitted); and further alleged that the tax collector, upon a purported authorization from the state controller, and pursuant to a notice of sale, which recited taxes, penalties and costs in the total amount of $16.19, on February 11th, 1905, offered the whole property for sale to the person who would pay the largest sum of money therefor; that said tax collector did not, in offering said property for sale to the "highest bidder" at said purported sale, make any statement that the person who would pay the amount claimed to be due as taxes, penalties and costs, for the least quantity of land, would be the highest bidder; nor offer to sell the least portion of said property to the person who would pay said amount of $16.19; that the value of said property on February 11, 1905, was $500; that its value at that time was greatly in excess, to-wit, to the extent of more than $480, of any sum either due or claimed to be due by the tax collector of said county of Los Angeles, as taxes, costs, penalties and charges thereon; and that if the said tax collector had stated that the "highest bidder" at such sale would be the person who would take the least quantity of the land so offered for sale, and pay the amount of taxes, penalties, costs and charges claimed as

due thereon; or had offered to sell the least portion of said property to the person who would pay the said amount of $16.19, which was so claimed by said tax collector to be the amount then due as taxes, costs, interest, penalties and charges upon said property, that the sale of a small portion only of said whole lot of land would have sufficed to have produced sufficient money with which to satisfy such claim for taxes, penalties, costs and charges; and that said lot was and is capable of being divided and sold in parts. That the tax collector made his purported sale of the whole property to the defendant for the sum of $166; and that the whole proceeds of such sale were paid into and retained by the public treasury. The plaintiff further complained that such attempted sale and deed of the whole property to the person who would pay the largest sum of money therefor, when the sale of a less quantity would have sufficed to have produced the amount charged as taxes and penalties, and without said tax collector having first offered to sell the least portion or quantity of said land to the person who would pay the amount of taxes, interest, penalties, costs and charges, claimed to be due thereon, were and are void, and were in violation of his rights under the Constitution of the United States and of the state of California, in the following respects:

(a) That such attempted sale of said whole property to the person who would pay the largest sum of money therefor is in violation of the provisions of section 1, article XIII, of the Constitution of the state of California, which provides that taxation must be equal, in the following words: "All property in the state * * * shall be taxed in proportion to its value, to be ascertained as provided by law."

(b) That the said attempted sale of said whole property constitutes an attempted taking of plaintiff's said property without due process of law, and is in violation of that portion of the fourteenth amendment to the Constitution of the United States, which provides that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of * * * property without due process of law."

(c) That said attempted sale of said whole property to the person who would pay the largest sum of money therefor is in violation of that portion of the fourteenth amendment to the Constitution of the United States, which provides: "No state shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws."

(d) That said attempted sale of said whole property to the person who would pay the largest sum of money therefor, and for an amount in excess of the sum either due or claimed to be due thereon, is in violation of that portion of the fifth amendment to the Constitution of the United States, which provides that: "No person shall * * * be deprived of * * * property, without due process of law; nor shall private property be taken for public use without just compensation."

(e) That the said purported sale is in violation of that portion of the fifth amendment to the Constitution of the United States, which provides that: "Private property shall not be taken for public use without just compensation."

Plaintiff further alleged that prior to filing his action he had offered and tendered payment to the defendant and to the several tax officials charged with the collection of revenue all the said amounts claimed due as taxes, together with interest thereon at the legal rate of seven per cent per annum.

The answer of the defendant denied plaintiff's ownership and alleged ownership in himself under the tax proceedings; and set out at length other of such tax proceedings, the substance of which merely had been alleged in the complaint.

All of the facts in the case were stipulated between counsel, or are established by uncontradicted evidence. [Tr. fols. 63-73.] By the stipulation it was admitted that the plaintiff was the record owner, or the successor of the record owner, prior to the tax proceedings, of the land in litigation. [Tr. fols. 63, 64.] The only title asserted by the defendant was that obtained by him at the tax sale above referred to. From the facts established it was shown that at the time of the alleged sale of the property to the defendant the amount claimed to be due thereon by the tax officials was only the sum of $16.19; and by the deed to the defendant [Tr. fols. 14-18] it was recited that the property was sold to the defendant for $166, and that the taxes and costs at the time of the sale to the state amounted to $2.51.

The plaintiff presented as a witness B. L. Bates, who was sworn, and testified that he was familiar with land values in the vicinity of the land in litigation and knew the value of this particular lot on the date of its sale. Plaintiff offered to prove by this witness that the value of said lot 34 on February 11, 1905, was between $500 and $600; that he attended at the purported sale of said lot on February 11, 1905; that the tax collector who conducted such sale, before commencing same, announced that he would sell the property offered, to the persons

who would pay the largest sums of money for the respective parcels of property to be offered; and did not make any different announcement, nor did he announce that the successful bidder would be the one who would pay the amounts charged against the respective parcels of land for the least quantity thereof; that the said lot was only offered for sale to the person who would pay the largest sum of money for the whole of the said lot; that if the tax collector had offered to sell the least portion of said lot to the person who would pay the amount charged thereon as taxes, penalties, interest and costs, said Bates was then and there ready to bid and pay the amount charged upon said lot for a less quantity than the whole thereof, viz.: he would have been willing to take the northerly or easterly 10 feet of said lot and to have paid said amount claimed charged thereon as taxes, interest, penalties and costs, i. e., $16.19 for a deed of such northerly or easterly 10 feet of said lot; to which offer the defendant made objection that such evidence, if received, would be incompetent, irrelevant and immaterial, which objection was sustained by the court and such proposed testimony was not received or considered, to which ruling the plaintiff excepted and which he assigns as error. [Tr. fols. 66, 67.]

The trial court made its findings of fact and conclusions of law, holding, in substance, the

tax deed to the defendant and the proceedings upon which the same rested to be valid; that the sale and deed are not in violation of any constitutional provisions; that the defendant is the owner of the property, and that the plaintiff take nothing by his action.

From said decree an appeal was taken to the Supreme Court of the state of California; which judgment was affirmed by the District Court of Appeal of said state [Tr. folio. 87-90]; and plaintiff's petition for a rehearing in the Supreme Court was denied by the said Supreme Court of California [Tr. folio. 91-108]; and from the said judgment and the affirmance thereof, the plaintiff in error now takes this appeal to the Supreme Court of the United States.

SPECIFICATION OF ERRORS.

The plaintiff in error specifies the following errors as being relied upon by him [Tr. folio. 109-112]:

(1) The said District Court of Appeal and the Supreme Court of the state of California erred in holding that under the agreed statement of facts in the case, as appears by stipulation of counsel, and under the Constitution of the United States, the plaintiff in error was not entitled to a judgment.

(4) The said District Court of Appeal and the Supreme Court erred in not reversing the judgment of the trial court, and in not giving to plaintiff in error his rights under the Constitution of the United States.

(5) The said District Court of Appeal and the Supreme Court erred in holding that the defendant in error is entitled to a decree quieting title against the plaintiff in error.

(6) The said District Court of Appeal and the Supreme Court erred in not reversing the order of the trial court sustaining the objections of the defendant in error to the receiving in evidence of the proposed testimony of the witness B. L. Bates, and the offer to prove by the testimony of said Bates that if the tax collector had offered to sell the least portion of said lot to the person who would pay the amount charged thereon as taxes, penalties, interest and costs, that he was then and there ready to bid and pay the several amounts charged upon said lot for a less quantity than the whole of such interest, viz.: that he would have been willing to take the northerly or easterly ten feet of said lot and to have paid the amount claimed charged thereon as taxes, interest, penalties and costs, i. e., $16.19 upon said lot 39, for a deed of such northerly or easterly ten feet of said lot.

(5) The said District Court of Appeal and the Supreme Court erred in not reversing the order of the trial court sustaining the objections of the defendant in error to the offer of the plaintiff in error to prove by the witness Bates the value of the said lot on February 11th, 1905, to be between $500 and $600, and that said lot was capable of being subdivided.

(6) The said District Court of Appeal and the Supreme Court erred in not holding that the deed to the defendant in error covering the land in litigation was and is null and void for the reason that it was issued pursuant to a pretended sale.

That said last mentioned pretended sale purported to be made to the "highest bidder," viz., to the person who would pay the greatest sum of money for said parcel of land. That the tax collector who conducted the said pretended sale did not, in offering said property for sale, make any statement that the person who would pay the amount claimed to be due as taxes, penalties and costs for the least quantity of land would be the highest bidder; nor did he at such sale offer to sell the least quantity of said property to the person who would pay the said sum purported to be charged upon said land as taxes, penalties, costs and charges.

That said lot was at the time of said pre-

tended sale, to-wit, on the 11th day of February, 1905, of the reasonable and market value of between $500 and $600; that the value of said lot on said date was greatly in excess, to-wit, to the extent of more than $480, of any amount either due or claimed to be due as taxes, costs, penalties or charges thereon; that said parcel of land was capable of being subdivided; and that if said tax collector had stated that the "highest bidder" at such sale would be the person who would take the least quantity of land so offered for sale, and pay the amount of taxes, penalties, costs and charges claimed as due thereon, or had offered to sell the least portion of said parcel of land to the person who would pay the said amount claimed by said tax collector to be due as taxes, costs, interest, penalties and charges upon the said property, that the sale of a small portion only of said parcel of land, to-wit, the northerly or easterly ten feet of the said lot, would have sufficed to have produced sufficient money with which to satisfy such claims.

That no provision has been made by law, or otherwise, to turn over to the owner of said parcel of land the difference between the amount actually due the state and county for taxes, penalties, costs and charges and the amount actually received at the sale, and that the whole

of said excess has been turned into the state and county treasuries.

That the said proceedings of said tax collector, and the pretended sale and deed of said whole parcel of land for the sum of $166, when the whole amount claimed by said tax collector to be due thereon as taxes, penalties, interest, costs and charges did not exceed $16.19; and when a sale of a less quantity than the whole of said lot of land would have sufficed to have produced said sum of $16.19; and without said tax collector having first offered to sell the least portion or quantity of said parcel of land to the person who would pay the amount of taxes, interest, penalties, costs and charges claimed to be due thereon; and without delivering to the owner of the lot the amount received over and above the amount due the state and county; and, also, that portion of section 3897 of the Political Code of the state of California which purports to require such form of sale, upon which said pretended proceedings are based, were and are void upon the following grounds:

(a) That the said attempted sale of said whole property constitutes an attempted taking of plaintiff's said property without due process of law, and is in violation of that portion of the fourteenth amendment to the Constitution

of the United States which provides that: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of * * * property without due process of law."

(b) That said attempted sale of said whole property to the person who would pay the largest sum of money therefor is in violation of that portion of the fourteenth amendment to the Constitution of the United States which provides: "No state shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws."

(c) That said attempted sale of said whole property to the person who would pay the largest sum of money therefor, and for an amount in excess of the sum either due or claimed to be due thereon, is in violation of that portion of the fifth amendment to the Constitution of the United States which provides that: "No person shall * * * be deprived of * * * property without due process of law; nor shall private property be taken for public use without just compensation."

(d) That the said purported sale is in violation of that portion of the fifth amendment to the Constitution of the United States which pro-

vides that: "Private property shall not be taken for public use without just compensation."

ARGUMENT.

The appellant contends that the said proceedings of said tax collector, and the pretended sale and deed of said whole parcel of land for the sum of $166 when the whole amount claimed by said tax collector to be due thereon as taxes, penalties, interest, costs and charges did not exceed $16.19, and when a sale of a less quantity than the whole of said lot of land would have sufficed to have produced said sum of $16.19, and without said tax collector having first offered to sell the least portion or quantity of said parcel of land to the person who would pay the amount of taxes, interest, penalties, costs and charges claimed to be due thereon; and also, that portion of section 3897 of the Political Code of the state of California, which purports to require such form of sale, upon which said pretended proceedings are based, were and are void and in violation of the rights guaranteed to him by the Constitutions of the United States and of the state of California, as specified in the foregoing assignments of error (a), (b), (c) and (d), and in sections (a), (b), (c), (d) and (e) inclusive of paragraph XV of plaintiff's amended and supplemental complaint. [Tr. fols. 20-21.]

The portion of section 3897 of the Political Code of the state of California referred to provides:

> "Whenever the state shall become the owner of any property sold for taxes and the deed to the state has been filed with the controller as provided in section three thousand seven hundred and eighty-five, the controller may thereupon by a written authorization direct the tax collector of the county or city and county to sell the property or any part thereof as in his judgment he shall deem advisable in the manner following: He must give notice of such sale by first publishing a notice for at least three successive weeks in some newspaper published in the county or city and county, * * *. Such notices must state specifically the place of and the day and hour of sale and shall contain a description of the property to be sold and shall also contain a detailed statement of all the delinquent taxes, penalties, costs and expenses up to the date of such sale and shall give the name of the person to whom the property was assessed for each year on which there may be delinquent taxes against said property or any part thereof and said notice shall also embody a copy of the authorization received from the controller. * * * At the time set for such sale, the tax collector must sell the property described in the controller's authorization and said notices, at public auction to the highest bidder for cash in lawful money of the United States; but no bid shall be received or accepted at such sale for less than the amount of all the taxes levied upon such property

and all interests, costs, penalties and expenses up to the date of such sale."

Other sections of the Political Code herein referred to are as follows:

"Section 3771. On the day and hour fixed for the sale, all the property delinquent, upon which the taxes of all kinds, penalties and costs have not been paid, shall, by operation of law and the declaration of the tax collector be sold to the state."

"Section 3780. A redemption of the property sold may be made by the owner, or any party in interest, within five years from the date of the sale to the state, or at any time prior to the entry or sale of said land by the state, in the manner provided by section three thousand eight hundred and seventeen."

"Section 3817. In all cases where real estate has been sold, or may hereafter be sold for delinquent taxes to the state, and the state has not disposed of the same, the person whose estate has been, or may hereafter be sold, his heirs, executors, administrators or other successors in interest, shall, at any time, after the same has been sold to the state, and before the state shall have disposed of the same, have the right to redeem the same by paying to the county treasurer of the county wherein the real estate may be situated, the amount of the taxes, penalties and costs due thereon, at the time of said sale, with interest on the aggregate of the amount of said taxes, at the rate of seven per cent per annum; and also all taxes that were a lien upon said real estate at the time said taxes became delinquent; and also all unpaid taxes of

every description assessed against the property for each year since the sale. * * *"

"Section 3898. The moneys received from such sale shall be distributed as follows: * * * said tax collector shall pay all amounts into the county treasury, and the treasurer shall account to the state for its portion in the settlement required by section 3865 and section 3866. On receiving the amount bid, as prescribed in the preceding section, the tax collector must execute a deed to the purchaser, reciting the facts necessary to authorize such sale and conveyance which deed shall convey all the interest of the state in and to such property, and shall be *prima facie* evidence of all facts recited therein."

The tax collector, claiming to act under the authorization of the said controller, made a purported sale of the land in litigation, 40 by 130 feet in size, and which plaintiff offered to prove was, at the time of the sale, of the value of $500 or $600 [Tr. fols. 66, 67], upon which only the sum of $16.19 was claimed due [Tr. fol. 9], receiving for the tract as a whole the sum of $166. Mr. Bates would have been willing to pay the entire sum charged upon the parcel of land and take the northerly or easterly ten feet of said lot. This would have left three-fourths of the lot remaining to the plaintiff. At the sale there was no opportunity offered the bidders to buy anything less than the entire tract of land. The law of California makes no

provision for paying to the original owner the excess of the amount received at the sale of the land over the amount due the state for taxes and charges. The sum of $149.81, being the excess in this case, has been turned into the public treasury, and the original owner has received no compensation for that part of his land which it was not necessary to sell in order to collect the amount claimed by the tax officials as due on the property.

The appellant urges that the proceedings by which defendant claims title to this whole property are violative of his constitutional rights in the following respects:

That such action on the part of the tax officials constitutes the taking of his property without due process of law.

That by such action the plaintiff in error is denied the equal protection of the law.

That by such action a portion of his property is taken for a public purpose without compensation.

And that such action constitutes an unequal, arbitrary and oppressive exercise of the taxing power of the state.

In arguing that a party has been deprived of property without due process of law, it is well to consider first the meaning of the phrase, "due process of law." Its history clearly indi-

cates that this provision was added to our Constitution for the purpose of protecting property from confiscation or forfeiture by legislative enactment. The term has been used in the same sense that the term "the law of the land" has been used. It does not mean that any act which the legislature sees fit to declare the law of the land, or due process of law, shall be regarded as constitutional by the courts, for such a construction would deprive the courts of the power of exercising any restraints whatever on legislative action.

It is contended by the defendant in error herein that the title to the property passed to the state of California, by the declaration of the tax collector, upon the failure of the owner to pay the taxes which were a lien thereon. The original owner, under the provisions of section 3817 of the Political Code, above cited, continued to be recognized as the owner, and as entitled thereunder to redeem the property indefinitely, until a valid sale thereof should be made by the state. Considering, then, that the original owner had an interest in the property, the right to redeem, it cannot be said that the title of the state was at any time absolute. The fact that a manner is elaborately provided for the sale of the property at public auction at a later date negatives the idea that the state was the absolute owner.

On the part of the plaintiff in error we urge that by reason of the officer attempting to sell more property than was necessary to raise the fund required to satisfy the taxes and costs as computed by the auditor to be due [Tr. fol. 9], that he acted in excess of the powers belonging to such office, and that his act as to such excess is void; and it being impossible to separate the part of the sale which might be held valid from the part which is invalid, the whole proceeding should be held void; and the plaintiff should still be held entitled to make the redemption.

Sale to the Highest Bidder.

The tax officials in seeking to carry out the provisions of section 3897 of the Political Code have made literal application of the expression: "The tax collector must sell the property described * * * to the HIGHEST BIDDER for cash in lawful money of the United States," holding same to mean, *to the person who would pay the largest sum of money for the whole property;* and the courts of California in construing such code provisions, and the application thereof as made by the tax officials, have adopted the same view.

We urge that such construction is erroneous: and that in proceedings, having for their purpose the collection of revenue, that the right construction to be given to the term "highest bidder" is the person who will pay the amount charged as the tax and penalties, and who will take the least quantity of the property for such sum.

See:

Holdin v. Hardy, 169 U. S. 366.

Federal decisions on the subject are not numerous; but those which have been rendered, we submit, amply sustain our position in the premises.

One of the ablest decisions on the question is found in the case of Martin v. Snowdon, a case decided by the highest court in Virginia, and reported in 18 Gratt. 100, 135. In this decision the court was deciding the manner of enforcing the provisions of the acts of congress passed during the war of the rebellion for the collection of direct land taxes. The act of June 7, 1862, provided that within sixty days after the charge on the land had been fixed the owners must pay the tax commissioner the tax due. The first clause provided "That the title of, in and to each and every parcel of land upon which said tax has not been paid as above provided shall thereupon become forfeited to the United States." The second clause provided, "And

upon the sale hereinafter provided for shall vest in the United States or in the purchaser at such sale in fee simple, etc." The seventh section, as amended, required the tax commissioner, in case the taxes should not be paid as required by the third section (within sixty days), to advertise the property for sale and to sell the same to the highest bidder for a sum not less than the taxes and charges, and it authorized the commissioner to bid off the property to the United States at such sale.

The highest court of Virginia held that the act did not work a forfeiture of the land to the United States, and that the sale of the whole, when a part was sufficient, was unconstitutional and void. The court says, on pages 135 *et seq.*:

> "Can a forfeiture of the land charged with taxes, such as is contended in these cases, be regarded as 'due process of law,' upon the principles established by that case? Literally speaking it is not any process at all, but operates by force of law and without any process or proceeding whatever, except the ascertainment by the commissioner of the sum chargeable on the land. But that is probably immaterial. The forfeiture of land to the Crown does not appear to have been a means employed and employed in England, at any period of its history, for enforcing the payment of taxes or other debts to the Crown. If it had been, we should have found such forfeiture treated of in the English law

[illegible] but nowhere do we find it mentioned. The summary methods employed in England in the early days for the collection of debts to the Crown seem to have been turned to purposes of oppression, and one of the chapters of Magna Charta provided for their suppression. * * * The same reasons I am constrained to think that it was not in the constitutional power of Congress to believe that upon non-payment of the tax within sixty days the land charged with the tax should be absolutely forfeited to the United States. It follows that if, on the true construction of the act of June 7, 1862, it provides for such a forfeiture, the plaintiffs in error acquire no title by their purchase. The forfeiture did not vest the title to the lands in the United States, and the commissioners could not pass title to land as the property of the United States. * * * The first objection taken to the sale is, that the whole land was sold, when it appears from the face that the land might have been divided without prejudice and a part of it sold for enough to pay the sum due to the United States. It was contended by the counsel for the defendant in error that the commissioners had an authority, upon a proper construction of the act, to sell the whole land when the money charged upon it might have been made by the sale of only a part of it. * * * How can it be said that a sale of the whole land is appropriate as a means of collecting the tax upon it? Can the sale of one acre of land be appropriate as a means of collecting a tax which might be collected by the sale of only one acre? Congress might just as well direct that the

> whole of defendant's estate should be sold under even execution, without reference to the value of the estate or to the amount due on the execution."

The sale was held invalid.

The case of Martin v. Snowden was removed to the United States Supreme Court, under the title of Bennett v. Hunter, 9 Wall. 326, 335, and there affirmed. While the decision rested upon the point of tender, the court, in speaking of the issue involved in our case, said:

> "The first clause of the act, therefore, is not to be considered an actual transfer of the land to the United States, if a more liberal construction can be given to it consistently with its terms. Now, the general principles of the law of forfeiture seem to be inconsistent with such a transfer. Without pausing to inquire why in any case the title of a citizen to his land can be divested by forfeiture and vested absolutely in the United States without any inquisition of record or some public transaction equivalent to office found, it is certainly proper to assume that an act of sovereignty so highly penal is not to be inferred from language capable of any milder construction. In the case of land forfeited by alienage the king could not acquire an interest in the land except by inquest of office. And so of other instances where the title of the sovereign was derived from forfeiture."

The case of Martin v. Snowden was reaffirmed by the Virginia court in the case of Downey v. Nutt, 19 Gratt. 59.

In another case the Supreme Court of the United States has expressed its views upon this question favorable to our contention. In Slater v. Maxwell, 6 Wall. 268, 274, the court had under consideration the validity of a tax title. The court, speaking by Mr. Justice Field, said:

> *"The sale of the entire tract in one body would have vitiated the proceeding, if bids could have been obtained upon an offer of a part of the property.* In this case the answer avers and the proof shows that the sheriff offered to sell a part of each tract without receiving a bid, and it was only then that the entire tract was put up and struck off to the defendant."

In Commercial Bank v. Sandford, 99 Fed. Rep. 154, it was held that under the statute of South Carolina (Acts 1887; 19 Stat. Large 884), providing that a sheriff having a tax warrant for collection shall seize and sell so much of the property of the delinquent taxpayer as may be necessary to raise the sum of money therein named, and charges thereon, the limitation is mandatory, and a sale for $85 of a tract of land worth $2,500, and readily capable of division, to satisfy a tax warrant calling for only about $30, is unauthorized and voidable by the land owner.

In Turpin v. Lemon, 187 U. S. 51, 60, opinion by Justice Brown, it is said:

> "Under the 14th amendment the legislature is bound to provide a method for the assessment and collection of the taxes that shall not be inconsistent with natural justice."

In re Kemmler, 136 U. S. 436, it is said:

> "In the 14th amendment the words 'due process of law' refer to that law of the land in each state which derives its authority from the inherent and reserved powers of the state, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions."

In Holden v. Hardy, 169 U. S. 366, the term is further commented upon as follows:

> "'Due process of law' implies a conformity with natural and inherent principles of justice, and forbids the taking of one man's property or right of property for another's or the state's benefit without compensation, and requires that no one shall be condemned in person or property without opportunity to be ' ard."

In Davidson v. New Orleans, 96 U. S. 97, opinion by Justice Bradley, it was said:

> "A state cannot make 'due process of law' anything which, by its own legislation, it chooses to declare such. * * *
>
> "In judging what is 'due process of law' respect must be had to the cause and object of the taking, whether under the taxing

power, the power of eminent domain, or the power of assessment for local improvements, or none of these; and, if found to be suitable or admissible in the special case, it will be adjudged to be 'due process of law'; but if found to be arbitrary, oppressive, and unjust, it may be declared to be not 'due process of law.'"

The text writers have uniformly taken the position that tax collectors cannot sell more land than is necessary to pay the amount of the charges thereon.

In Cooley on Taxation (3rd ed.) 953, the author states:

> "It has been said that in the absence of any statute limiting the officer's right to sell, to so much as would be requisite to pay the tax and charges, a restriction to this extent would be intended by the law. Whether this is so or not is perhaps not very material, as it is not for a moment to be supposed that any statute would be adopted without this or some equivalent provision for the owner's benefit. And such a provision must be strictly obeyed. A sale of the whole when less would pay the tax would be such a fraud on the law as to render the sale voidable at the option of the land owner, and the deed would be void on its face if it showed the fact of such excessive sale."

Black on Tax Titles, section 18, says:

> "It is a cardinal principle of sound political economy that taxation should be equal.

> It would be wrong to conclude that because absolute equality cannot be attained, that the maxim of equality be entirely disregarded by the legislature, or that it can be set up as a shield of protection in the courts. When the particular case is on its face so palpably oppressive and unequal as to furnish conclusive evidence that equality was not sought for but avoided, and that confiscation instead of lawful taxation was designed, then it is the right and duty of the judiciary to declare that the legislative body has overstepped the limits of its legal discretion."

Also from Burroughs on Taxation, page 305:

> "If there be no statute regulating the matter, the same principle would be enforced by the courts, and no more would be allowed to be sold than was necessary for the purpose of paying the delinquent taxes and charges."

Taxes must be proportional and reasonable, and in accordance with the assessed value.

Blackwell on Taxation, 4 *et seq.;*
Desty on Taxation, sec. 1119;
Cooley on Taxation (3rd ed.), 4, 419;
Burroughs on Taxation, 61 *et seq.;*
Hilliard on Taxation, 22, 23.

Judge Cooley in his work on constitutional limitations, pages 607 *et seq.*, says:

> "It is necessary to add that certain elements are essential in all taxation, and that it will not follow, as of course, because the

power is so vast, that everything which may be done under any pretense of its exercise will leave the citizen without redress, even though there be no conflict with express constitutional inhibitions. Everything that may be done under the name of taxation is not necessarily a tax; and it may happen that an oppressive burden imposed by the government, when it came to be carefully scrutinized will prove instead of a tax to be an unlawful confiscation of property unwarranted by any principle of constitutional government. * * * There are cases where it is entirely possible for the legislature so clearly to exceed the bounds of the authority that we cannot doubt the right of the courts to interfere, and check what can only be looked upon as ruthless extortion, provided the nature of the case is such that judicial process can afford relief. As unlimited power to make any and everything lawful which the legislature might see fit to call taxation, would be, when plainly stated, an unlimited power to plunder the citizen. The Supreme Court of Iowa has said: 'If there be such a flagrant and palpable departure from equity in the burden imposed, if it be imposed for the benefit of others or for the purposes in which those objecting have no interest, and are therefore not bound to contribute, it is no matter in what form the power is exercised, it must be regarded as coming within the prohibition of the constitutional design to protect private rights against oppression however made and whether under color of recognized power or not. * * * It is of the essence of taxation that it be levied with equality and uniformity, and to this

> end, that there should be some system of apportionment. * * * When taxes are levied upon property there must be an apportionment with reference to a uniform standard or they degrade into mere arbitrary exactions. In this particular, though the state constitutions have been very specific, too, in providing for equality and uniformity, they have done little more than to state in concise language a principle in constitutional law, which, whether declared or not, would inhere in the power to tax. * * * But whatever may be the basis of taxation, the requirement that it shall be uniform is universal. * * * It is true of the political divisions of the state at large, that legislative authority must be shown for every levy of taxes.'"

A number of the courts of last resort of the different states have decided questions similar to that now under consideration in favor of the contention of the plaintiff in error. While it is true that the statute passed by the legislature of the state of California is unique and seems to be different in some respects from the others, yet the provision allowing a collector to sell a valuable tract of land in its entirety to provide not merely a small amount of revenue, but to appropriate the whole proceeds of sale to public purposes, involves a matter which has come up for consideration in other states and has been there construed as unconstitutional.

In the case of Margraff, Collector, v. Cunningham's Heirs, 57 Maryland 585, the court said:

> "It must not be inferred * * * that the power of a collector to sell land for taxes is unlimited as to quantity. On the contrary, his duty is to sell no more than is reasonably sufficient to pay the taxes and charges thereon, where a division is practicable without injury. In Dyer v. Boswell, 39 Md. 471, it was said that Art. 81, sec. 60, of the Code, 'merely asserts a general principle, which is applicable to sales made by sheriffs and collectors, and has been often enforced upon grounds of equity and reason, which forbid such officers from selling in mass a whole tract of land to pay a small sum of money, when the sale of one or two acres would be sufficient.' On this subject we also refer to Blackwell on Tax Titles, 317. The author cites O'Brien v. Coulter, 2 Black 421, in which it was decided by the Supreme Court of Indiana, 'where the statute was silent as to the quantity which might be offered and sold to pay taxes, that a sale of a greater quantity than was necessary to satisfy the tax where the land was susceptible of a division, and of a sale in smaller parcels, was illegal and void.' The court, after quoting the case of Stead's Executors v. Course (4 Cranch 403), which arose upon the construction of a Georgia statute, say: 'The rule must be the same without a positive law for the purpose. It rests upon principles of obvious policy and universal justice.'"

In Stead's Executors v. Course (4 Cranch 403), where a sale had been made by a tax collector of an entire tract of 450 acres, without specifying the amount of taxes actually due for which the land was liable, the court said, Chief Justice Marshall delivering the opinion, that the sale ought to have been of so much of the land as would satisfy the tax in arrears; and if the whole tract was sold when a smaller part would have been sufficient, the collector exceeded his authority.

Another case in point is that of Williamson v. White, 101 Ga. 277. Here 555 acres of land worth at least $2 per acre, and probably much more, were sold under execution against a land owner for taxes amounting to less than $14. The court held the levy to be grievously excessive, and said:

> "That a levy of the character described is such a fraud that the owner of the property, or any one claiming under him, may have it declared void, is too well settled by the adjudications of the court to now admit of discussion."

In the case of Black v. State, 113 Wis. 205, 90 Am. St. Rep. 853, a collateral inheritance tax case, it was held that one person charged a different rate than another is denied the equal protection of the law.

Taxes shall be equal upon all inhabitants according to their estate and ability.

Newburyport v. County, 121 Met. 217.

In H. S. Dist. v. Lancaster, 60 Neb. 147, 83 Am. St. Rep. 525, it was held that not only the valuation for the purposes of taxation but the rate thereof as well must be uniform. It is not in the power of the legislature to provide otherwise, either directly or indirectly.

In Matter of Pell, 171 N. Y. 48, 63 N. E. Rep. 789, it was held that a statute imposing a tax is unconstitutional if it does not apportion the burden equally among the owners of estates sought to be taxed.

In the case of Ives v. Lynn, 7 Conn. 504, 512, the court uses this language:

> "It was next objected that it does not appear by the return of the officer, or the deed in question, that the sale of all the land disposed of was necessary to raise the sum for which it was sold; or that a part of the land was first offered for sale, and found to be insufficient. * * * It is required of the collector that he act with fairness, and sell no more property than is necessary to pay the taxes and charges."

In Taylor v. Palmer, 31 Cal. 241, 255, it was declared that:

> "The power of taxation when exercised either by the legislature immediately or

> mediately through the intervention of a municipal corporation, must be exercised under and within the limitation of the constitution—that is to say, it must be exercised upon the *ad valorem* principle, and so as to secure equality and uniformity."

The Supreme Court of Mississippi, in Griffin v. Mixon, 38 Miss. 424, 434, decided a case in which the plaintiff claimed title under a deed from the state of Mississippi which conveyed the title of the state, acquired by a forfeiture of the *locus in quo* for nonpayment of taxes, under legislative enactment. The law provided that the owner could redeem within two years after the forfeiture. The court said:

> "The question involved is whether the legislature had power by simple act of legislation to vest the title to lands, delinquent for nonpayment of taxes, in the state of Mississippi. * * * But that the legislature, without notice or demand—upon the failure of the citizen to pay his taxes—and without giving him the opportunity to show that he has paid them, may adjudge his lands forfeited to the state, and then transfer them to another, is a practice neither 'derived from Magna Charta' nor known in this state, until the passage of the act in question. * * * Regarding the act in question as an assumption of executory and judicial power by the legislature, divesting the defendant of his property 'without due course of law' or without 'just compensation first made,' by a simple act of legislation, without

> hearing, without inquiry, without notice, it is in my judgment in violation of our organic law and therefore void."

In Boggs v. Commonwealth, 76 Va. 989, the court held that forfeiture of rights and property cannot be adjudged by the legislative act, and confiscation without a judicial hearing, after due notice, would be void as not being by due process of law.

In Dorman v. State, 34 Alabama 216, 237, the court said:

> "If life, liberty and property could be taken away by the direct operation of a statute, the enjoyment of these rights would depend upon the will and caprice of the legislature and the provisions would be a mere nullity. Thus construed the constitution would read: 'No person shall be deprived of his life, liberty or property unless the legislature pass a law to do so.' A proposition so plain upon reason and principle hardly needs to be buttressed by authority."

Other authorities state that, in the absence of any statute limiting the officer's powers in this particular, a restriction to the quantity requisite to pay the sum due would be intended by the law.

> 27 A. & E. Enc. of L., 831, citing:
> Guisebert v. Etchison, 51 Md. 478;
> Brinson v. Lassiter, 81 Ga. 40.

The view that it was the intention of the California legislature that no more property should be sold than was necessary to satisfy the tax, finds strong support from examination of other related provisions of the Codes of the state, than those above quoted.

Section 3771 of the Political Code, enacted in 1895, at the same time as the other provisions embracing the present system of taxation, provided that:

> "When the original tax amounts to the sum of $300 or more, upon any piece of property or assessment delinquent, the state may bring suit against the owner of said property for the collection of said tax or taxes, penalties and costs, as provided in section 3899."

Section 3899 of the Political Code provides that:

> "The controller may, at any time after a delinquent list has been delivered to the tax collector, direct such tax collector not to proceed in the sale of any property on said list whereon the tax shall amount to three hundred dollars, or more. * * * The controller shall thereupon direct the attorney general to bring suit against the delinquent, in the proper court, in the name of the people of the state of California, to enforce such collection. The provisions of the Code of Civil Procedure relating to pleadings, proofs, trials and appeals, are hereby made applicable to the proceedings herein provided for."

which is made by the tax officials and the respondent that the state should be held entitled to sell the whole property under one form of tax procedure, when a sale of part would have produced sufficient to satisfy the claim, and to retain all of the proceeds of its sale as a whole, when under the other form of procedure for the collection of taxes, *which is provided by the same statutes,* the state is restricted to sell only so much property as is necessary to satisfy a judgment for the tax, and when under such latter form of procedure any excess obtained from the sale is required to be paid to the owner.

In the case of French v. Edwards, 13 Wall. 506, a case involving the validity of a tax deed issued under a tax sale by the state of California, the opinion by Mr. Justice Field, it is said:

> "The defendants asserted title to the premises under a deed executed by the sheriff of Sacramento county, upon a sale on a judgment rendered for unpaid taxes assessed on the property for the year 1864; and the whole case turned upon the validity of this tax deed.
>
> "By an act of California, passed in 1861, the district attorneys of the several counties of the state are authorized and required to commence actions for the recovery of taxes assessed upon real property and improvements thereon, which remain unpaid after a prescribed period.
>
> * * * * * * * *

"A further act of the state, passed in May, 1862, in relation to suits of this character, provides for service of process by publication in a newspaper, as well as by posting, and authorizes the court, in enforcing the lien for taxes, to exercise all the powers which pertain to a court of equity in the foreclosure of mortgages; but at the same time it declares that, when the decree of the court contains no special directions as to the mode of selling, 'no more of the property shall be sold than is necessary to pay the judgment and costs.' Stat. 1862, p. 520.

* * * * * * * *

"The deed of the sheriff does not show a compliance in the sale of the property with the requirements of the statutes mentioned. It does not show that the smallest quantity of the property was sold for which the purchaser would pay the judgment and costs; or that any less than the whole property was ever offered to bidders; or that any opportunity was afforded to take any less than the entire tract and pay the judgments and costs. The recitals of the deed are that the sheriff sold the land described to the highest bidder, and for the largest sum bid for the property; language which imports that the tract was offered in one body, and that there were more than one bidder, and of course that different sums were bid for it in this form.

"And the question is, whether this departure of the officer from the requirements of the statute rendered the sale invalid.

"* * * When the requisitions prescribed and intended for the protection of the citizen, and to prevent a sacrifice of his

property, and by a disregard of which his rights might be and generally would be injuriously affected, they are not directory, but mandatory. They must be followed or the acts done will be invalid. The power of the officer in all such cases is limited by the manner and conditions prescribed for its exercise.

* * * * * * * *

"Tested by them the sale of the sheriff in the case before us cannot be upheld. The provision of the statute, that he shall only sell the smallest quantity of the property which any purchaser will take and pay the judgment and costs, is intended for the protection of the taxpayer. It is almost the only security afforded him against the sacrifice of his property in his absence, even though the assessment be irregular and the tax illegal.

* * * * * * * *

"It is evident from this brief statement of the character of the proceedings and of the evidence permitted in these actions for delinquent taxes, that the provision in question is of the utmost importance to non-resident or absent taxpayers, and that in many cases it affords the only security they have against a confiscation of their property under the forms of law.

"It is plain to us, upon a consideration of the different statutes of California upon this subject, that whilst the legislature of that state intended to prevent by the strictest proceedings the possibility of any property escaping its proportional burden of taxation, it also intended by the provision in question to guard against a wanton sacrifice of the property of the taxpayer.

* * * * * * * *

> "The judgment must be reversed and the cause remanded for a new trial; and it is so ordered."

The court will observe in reading the opinion in French v. Edwards that while reference is therein made to an earlier California statute enacted in 1861 relating to tax sales, and which included a clause that the sheriff in selling property should sell only "the smallest quantity that any purchaser would take and pay the judgment and all costs," that the assessment then under review was for the year 1864, and that the statute then in force relating to such sales, and which is referred to and quoted from in the opinion, provided that "No more of the property shall be sold than is necessary to pay the judgment and costs." Such provision is substantially the same as that contained in section 694 of the Code of Civil Procedure, that, "After sufficient property has been sold to satisfy the execution, no more can be sold."

In further support of plaintiff's position that the "highest bidder," in such proceedings, is the person who will pay the tax for the smallest amount of property, we call the court's attention to the definition of the term as contained in a California statute, Sec. 342 of the Civil Code of California, relating to sales of shares of corporate stock for assessments levied thereon, which provides:

> "The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder."

The California legislature has in this enactment furnished a clear and unequivocal declaration of the sense in which the term "highest bidder" is used as applied to matters of assessment. The difficulty, therefore, in arriving at the right determination of this litigation has arisen, not so much because the legislature has not furnished a definition of this term in its enactment of section 3897 of the Political Code, but because a wrong application and construction have been given by the executive officials and by the courts in seeking to uphold their acts.

Upon the argument before the state courts the defendant relied mainly upon the decision of King v. Mullins, 171 U. S. 405. We urge that the case has little, if any, application here. An examination of the case shows that it is based upon a system of laws of West Virginia under which lands were not and could not be assessed or taxed unless listed by the owners, and to correct abuses where almost entire counties were held under one ownership, and which holdings the owners neglected to list or pay taxes upon, that peculiarly stringent laws were enacted, providing, in substance, that in case

such lands, where the holding was 1000 acres or more, were not listed and upon which the taxes were unpaid for five years, should be treated as forfeited. Thereupon it was the duty of the commissioner of school lands to file a petition in the proper circuit court praying for the sale of such lands; that he was required to state therein

> "the local situation, quantity or supposed quantity, and probable value of each tract, lot or parcel, and part of a tract of land therein mentioned, together with all the facts at his command, in relation to the title to the same, and to each tract, lot, part, or parcel thereof, the claimant or claimants thereof, and their residence, if known, and if not known, that fact shall be stated, and stating also how and when and in whose name every such tract, lot and parcel and part of a tract or lot, was forfeited to the state";

and that all claimants should be brought in by personal service of summons upon all found in the county, or by publication as to those who could not be found. Provision was made for the reference of the petition to a commissioner in chancery,

> "with instructions to inquire into and report upon the matters and things therein contained, and such others as the court may think proper to direct, and particularly to inquire and report as to the amount of taxes and interest due and unpaid on each tract, lot, and parcel, and part of a tract or lot of

land mentioned in the petition, in whose name it was forfeited, and when and how forfeited, in whom the legal title was at the time of the forfeiture, and if more than one person claimed adverse titles thereto at the date of the forfeiture, the name of each of such claimants and a reference to the deed book or books in which the title papers of any claimant thereof can be found; what portion or portions, if any, of such lands is claimed by any person or persons under the provisions of section three of article thirteen of the Constitution of this state, with the names of such claimants and the amount claimed by each as far as he can ascertain the same. If there were no exception to this report, or if there were any which were overruled, the court shall confirm the same and decree a sale of the lands, or any part of them, therein mentioned, which are subject to sale, for the benefit of the school fund, upon such terms and conditions as to the court may seem right and proper. * * * And if the former owner or owners, or person in whose name the land was returned delinquent and forfeited, or the heirs or grantee of such owner or person, or any person or persons holding a valid subsisting lien thereon, at the time of such forfeiture, bid a sum sufficient to satisfy such decree and the costs of the proceeding and sale, and such person or persons so bidding be the highest bidder, said commissioner shall sell the land on such bid, and report the same to the court for confirmation; but if the commissioner receive no bid from any such person, or if he shall receive a higher bid therefor from any other person not so men-

tioned, then and in either event the said commissioner shall sell the land at public auction to the highest bidder, after first giving such notice as may be provided by such decree."

By the same act it was provided:

"The former owner of any such land shall be entitled to recover the excess of the sum for which the land may be sold over the taxes charged and chargeable thereon, or which, if the land had not been forfeited, would have been charged and chargeable thereon since the formation of this state, with interest at the rate of twelve per centum per annum and the costs of the proceedings. * * * That at any time during the pendency of the proceedings instituted for the sale of forfeited lands for the benefit of the school fund, the owner, or any creditor of the owner having a lien thereon, might file his petition in the circuit court of the county for the redemption of his lands upon the payment into court, or to the commissioner of school lands, of all costs, taxes, and interest due thereon, and obtain a decree or order, declaring the lands redeemed so far as the title thereto was in the state immediately before the date of such order. * * *

"Sec. 18. In every such suit brought under the provisions of this chapter, the court shall have full jurisdiction, power and authority to hear, try, and determine all questions of title, possession, and boundary which may arise therein, as well as any and all conflicting claims whatever to the real estate in question arising therein. And the court in its discretion may at any time, re-

> gardless of the evidence, if any, already taken therein, direct an issue to be made up and tried at its bar as to any question, matter, or thing arising therein, which in the opinion of the court is proper to be tried by a jury. And if any such issue be as to the question of title, possession, or boundary of the land in question, or any part of it, it shall be tried and determined in all respects as if such issue was made up in an action pending in such court. And every such issue shall be proceeded in, and the trial thereof shall be governed by the law and practice applicable to the trial of an issue out of chancery; and the court may grant a new trial therein as in other cases tried by a jury."

This court, in determining the case of King v. Mullins, speaking through Mr. Justice Harlan, said:

> "Our duty is not to go beyond what is necessary to the decision of the particular case before us. If the rights of the parties in this case can be fully determined without passing upon the general question whether the clause of the West Virginia Constitution in question, alone considered, is consistent with the national Constitution, the question may properly be left for examination until it arises in some case in which it must be decided."

The court further said:

> "It is said that this shows that the taxpayer, after his land is forfeited to the state, is left by the statutes of West Virginia without any right or opportunity by

any form of judicial proceeding, to get it back or to prevent its sale, and, therefore, it is argued, he is absolutely divested of his lands solely by reason of his failure to place them on the proper land books. * * *

"The answer to this view is * * * the act * * * was so amended * * * as to make the proceeding in the circuit court for the sale of forfeited lands, in which the owners or clients could intervene and effect a redemption of their lands for forfeiture, a judicial proceeding." * * * And quoting from a West Virginia Superior Court decision: "'The state * * * subjected its right and title under the supposed forfeiture to question and investigation under the law through a suit, called in all interested adversely to its claim, and gave them leave to contest its right, and made its claim the subject of litigation.'"

The court then added:

"It thus appears that under the statutes of West Virginia in force after 1882 the owner of the forfeited lands had the right to become a party to a judicial proceeding, of which he was entitled to notice, and in which the court had authority to relieve him, upon terms that were reasonable, from the forfeiture of his lands. * * * Any sale had under the statute providing for a sale, under the order of court, for the benefit of the school fund, of lands alleged to be forfeited by reason of their not having been charged on the land books for five consecutive years with the state tax due thereon, would be absolutely void, if the land owner was not before the court, or had not been duly notified of the proceed-

> ings, but had done all that he could reasonably do to have his lands entered on the proper books and to cause himself to be charged with the taxes due thereon."

The court held that the system established by West Virginia under which lands are sold, with liberty to the owner, upon due notice of the proceeding which was required to be filed in the circuit court, to intervene, and secure a redemption of his land by paying the taxes and charges due, was not inconsistent with the due process of law required by the Constitution of the United States or the Constitution of the state.

The wide difference between the laws of the two states and between the facts of the two cases is at once apparent.

The decision in King v. Mullins was rested largely upon the judicial proceeding which the statute provided, to be had in a court of record, and whereby the owner was required to be regularly served with process. Furthermore, provision was carefully made, in the event the owner did not avail himself of his right to clear the property before decree of the court and sale thereunder, that still *the state should after sale retain only the amount of the taxes, interest and cost of collection, and that the excess should be paid to the owner.*

It is conceded, of course, that the power to tax is inherent in government; that it must provide for the procedure upon such collection; and that such procedure may provide for a sale of the whole property *in the event that a sale of less than the whole will not produce sufficient to pay the amount levied, with the reasonable cost of collection added.*

When, however, the tax officials attempt to dispose of the whole property for a sum very greatly in excess of the sum due with all costs added, and when it is shown that a sale of a small quantity of the land would produce sufficient to pay the tax, and costs, then we say that the owner has been deprived of such excess of property, so attempted to be sold, without any compensation to him therefor; without process of law therefor; and also that the provision of the constitution providing for the equal operation of the laws is violated.

The collection of an amount greatly in excess of the rate imposed for the year of assessment upon the value for such year, and of the costs of sale, will, we submit, render such sale void.

There never has been, in fact, any levy as to the amount collected in excess of the tax and costs justly chargeable; and the collection of such excess, if the excess was considered as a tax, would render the taxation unequal. Such excess, however, is neither a tax nor a penalty

of collection; and if considered in either light is arbitrary, unequal and oppressive; and is a confiscation by the state of the property of its citizen, as to the amount in excess of the tax charged others, with reasonable cost of collection.

The Constitution of California guarantees to its citizens that taxation shall be proportional (Art. XIII, Sec. 1); and the Constitution of the United States that each citizen is entitled to the equal protection of the laws. It will no doubt be urged in reply, as upon a former argument of the case, that under this law all citizens are treated alike, in that any or all of them may be similarly divested of their land. We submit, however, that because others might also suffer from the application of an unequal, unjust and oppressive statute does not make right that which is inherently and palpably wrong.

In California, after the lapse of five years from the so-called "sale to the state," which is not a sale in any ordinary sense, for no element of competition is present, the tax collector being required (Pol. Code, Sec. 3771) to strike off *all* delinquent property "to the state"; and after a so-called deed to the state, which amounts in substance to a declaration that the five year period subsequent to the sale has expired (the owner being still, under sections 3780 and 3817 of the Political Code, recognized as interested

in the property and as still entitled to redeem), the statute provides that the tax collector may sell the land, upon authority from the state controller, *to the "highest bidder," but for not less than all taxes and charges; and that the whole amount obtained from the sale shall be apportioned between the state and county.*

The exaction of such a PENALTY, if so considered, as that which appears here, in the retention of three-fourths of the amount derived from the sale of the whole lot, reported sold for less than one-third of its value, when a bidder was ready, able and willing to pay the tax for one-fourth of the property, presents no aspect which can commend itself to a court.

We contend, however, that the arbitrary and unjust application so made by the tax officials and the courts of California could be obviated, the law still remain effective, and yet preserve to the owner, in most instances, a considerable portion of his estate, provided this court adopts the construction which the authorities quoted state is implied, in all such proceedings, if not expressly enacted by statute, viz., that the term "HIGHEST BIDDER" means the person who will take the least quantity of the land and pay the taxes and charges.

Why should a nation, state, or municipal body, when no exigency of war, famine, panic, or other need requires, say to its citizen (pos-

sibly a minor, or under other disability), your tax has been due five years; the amount, it is true, is but a small fraction of the value of the property; we could sell a small portion of the land and produce the tax, but we have arbitrary and unlimited power to take the whole property, and the whole proceeds of its sale, and propose to do so. Theoretically, a nation or state may call every citizen to its defense, including women, children and the aged; but we think none ever did. And theoretically, a sovereign power could say that it might, in the exercise of its functions, levy a tax to the extent of one hundred per cent of the value of the property of its citizens. But so far as history records, we know of no power having ever attempted so extreme an exercise of its authority as applied to all of its citizens.

The case under review, however, presents a case where the state says to a *portion* of its citizens, we will take *all* of your property.

The Constitution of the state of California provides that "All property in the state * * * *shall be taxed in proportion to its value,* to be ascertained as provided by law." (Art. XIII, Sec. 1.)

Such provision is just and should be made effective. The sale of a parcel of land as an entirety, however, and which is capable of subdivision, for the largest sum of money, in this

case $166, a sum vastly in excess of the purported taxes, costs and penalties—$2.51, as recited in the deed [Tr. fol. 14], or $16.19, as computed by the county auditor [Tr. fol. 9]—and the turning of the proceeds of such sale into the public treasury, without regard to the amount of the tax due, is, we contend, violative of the constitutional provisions guaranteeing the equal protection of the laws; that taxation must be equal and uniform; and that no one shall be deprived of his property without due process of law; and renders such an attempted sale void.

The plaintiff in error has offered to do equity in the premises, and to repay to the defendant all money expended by him as taxes on the property, with costs and interest. And since the commencement of the action Sec. 3898 of the Political Code of California has been amended to provide for the return to the tax purchaser, by the state and county, of any excess he may have paid into the public treasury, over the amount of the taxes and costs, when for any reason the tax deed is held invalid by the courts.

In conclusion we respectfully submit that the construction sought to be given to the California statutes by the tax officials and the courts of that state, in holding that the provision of

section 3897 of the Political Code, "The tax collector must sell the property at public auction to the highest bidder," requires a sale of the whole of a tract of land to the person who would pay the largest sum of money therefor, and the retention in the public treasury of the whole proceeds of such purported sale for a sum many times greater than the small tax charged upon the land; and without giving an opportunity to bidders to bid for the smallest quantity of the land, such sum as would pay the tax and costs charged thereon, is erroneous, and contravenes the provisions of the Constitution of the United States in the respects above shown, and would result in the taking of private property without due process of law, and without compensation, and that such taking would constitute a form of taxation which would be unequal and oppressive in that plaintiff would be deprived of all of his land when a sale of one-fourth or less would have satisfied the tax; and that the court should hold that the "highest bidder," as applied to sales under tax or assessment proceedings, is the person who will pay the taxes and costs for the least quantity of property.

Upon the grounds above presented we urge that the judgment of the state courts should be reversed and the plaintiff in error held entitled to make redemption of the property.

Respectfully submitted,

ERNEST E. WOOD,
Attorney for Plaintiff in Error.

CHARLES LANTZ,
DAVIS, LANTZ & WOOD,
Of Counsel.

No. 200

IN THE

SUPREME COURT

OF THE

UNITED STATES.

William Chapman,
Plaintiff in Error,
vs.
George Zobelein,
Defendant in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR.

ERNEST E. WOOD,
Attorney for Plaintiff in Error.

CHARLES LANTZ,
DAVIS, LANTZ & WOOD,
Of Counsel.

Parker & Stone Co., Printers, 333 New High St., Los Angeles, Cal.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

William Chapman,
Plaintiff in Error,
vs.
George Zobelein,
Defendant in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR.

The defendant in error has argued at much length, and cited many cases upon subjects not bearing directly upon the main point at issue in the case.

We have not raised any issue regarding the validity of the assessment of $1.80, nor of the added penalties, costs and interest, which were computed to bring the amount due up to $16.19. If plaintiff had questioned the legality of such assessment of $1.80 then the numerous citations of cases made by the defendant might be considered as having some relevancy.

What we do attack though is the attempted sale by the state OF THE WHOLE LOT to raise the small sum due, when a sale of a quantity less than the whole, (one-fourth), would have produced sufficient money to satisfy the tax, costs, penalties and interest; and that in so far as more land has been sold than was necessary to satisfy the claim for taxes, costs, penalties and interest, plaintiff's land was taken without due process of law.

The response of the defendant is, in substance, that the statute provides for that manner of sale, and therefore it is right.

We rejoin by saying that the constitution was created to provide a check upon just such forms of attempted legislative confiscation of property.

No claim is advanced by defendant, nor could there be, that the difference of $149.81, between the sum of $16.19 and $166., the amount for which the whole lot was reported sold, was a tax; and likewise, nothing has been or can be said in justification of the sale of the remaining three-fourths of the tract when sale of one-fourth would have paid the entire amount charged upon it.

To the extent of such three-fourths of the land, we contend therefore, that the acts of the tax officials constitute an arbitrary spoliation or deprivation of plaintiff of his property.

The only authority claimed by the plaintiff in error for the sale of this whole property for the largest sum of money, without regard to the amount due; and without offering to sell a less quantity than the whole; and as constituting "due process of law" for the sale, is that contained in Sec. 3897 of the Political Code, providing that "At the time set for such sale, the tax collector must sell the property * * * at public auction to the highest bidder for cash in lawful money of the United States."

The vice of this legislation is manifest when it is sought thereunder to sell the whole parcel of property to the one who will pay the largest amount of money therefor; when, under the facts as shown in the case at bar a sale of a small portion of the land, viz: one-fourth, would have been sufficient. Such provision of the statute should be held, either, to be beyond the power of the legislature to enact, or that it must be so construed that the term "highest bidder" means the person who will pay the taxes, costs, etc., for the least quantity of land. It was well said by Mr. Justice Field, in the case of Williams v. Supervisors of Albany County, 122 U. S. 154, that the essentials of due process of law must be found in the statute, and cannot be departed from without violating the Constitution of the United States; and that to determine the existence of whether such es-

sentials exist, or that due process of law has been had, is the final province of this court.

In conclusion, we respectfully submit, that upon this form of sale, as attempted to be made by the state, that the essentials which constitute the due process of law, contemplated by the Fourteenth Amendment to the Constitution of the United States do not exist, and that the judgment appealed from should be reversed.

ERNEST E. WOOD,
Attorney for Plaintiff in Error.

CHARLES LANTZ,
DAVIS, LANTZ & WOOD,
Of Counsel.

No. 200

IN THE

SUPREME COURT

OF THE

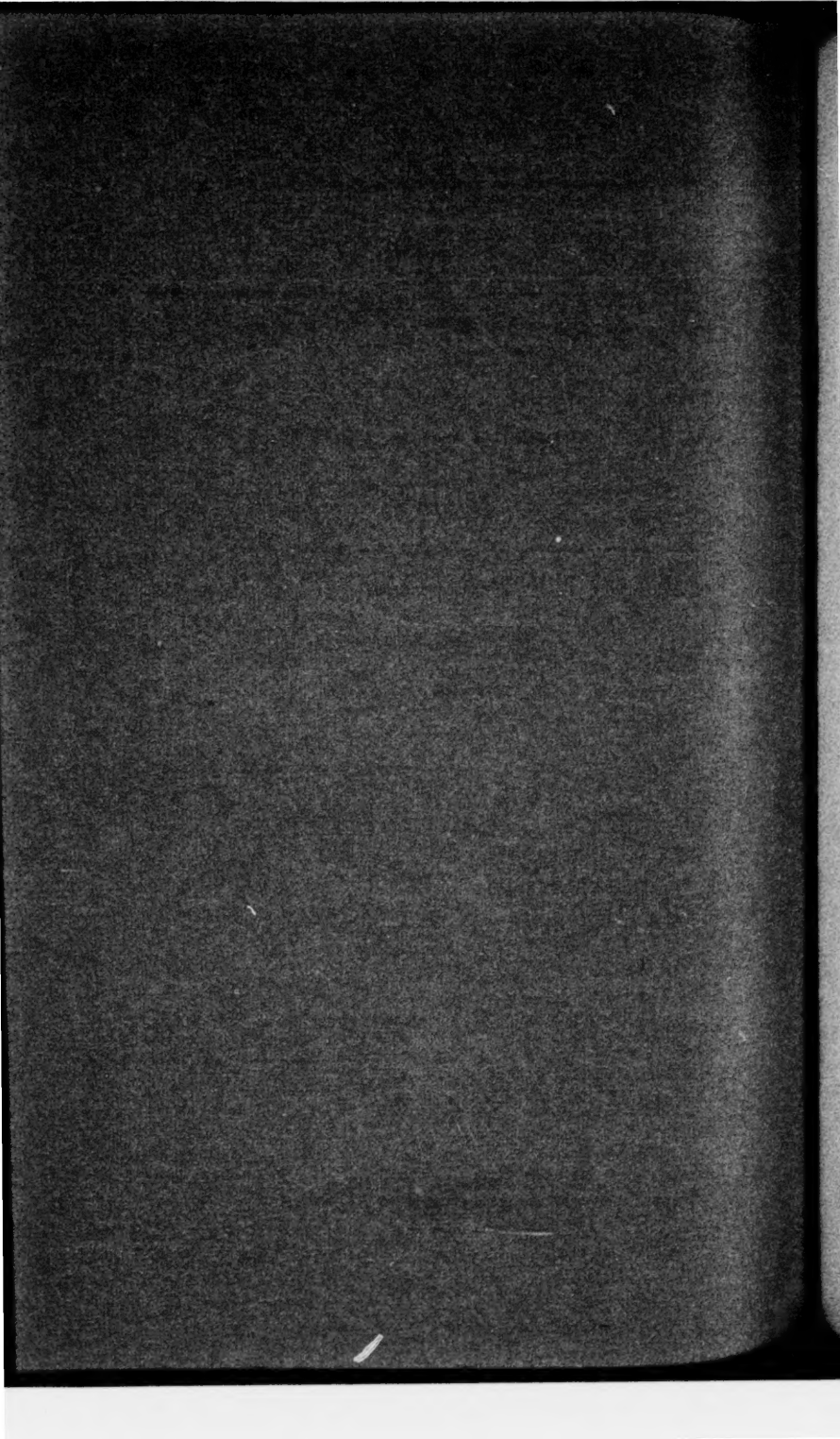
UNITED STATES.

William Chapman,
Plaintiff in Error,
vs.
George Zobelein,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

EDW. F. WEHRLE,
Stimson Blk., 129 W. 3rd St., Los Angeles, Cal.,
Attorney for Defendant in Error.

Parker & Stone Co., Printers, 235 New High St., Los Angeles, Cal.



INDEX TO BRIEF.

TABLE OF CASES CITED.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

William Chapman,
Plaintiff in Error,
vs.
George Zobelein,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

Lot 34 in the University Addition Tract, Los Angeles county, California, was assessed to Daniel Givens for the year 1898, under assessment No. 10393 by the county of Los Angeles, state of California.

The law of California then provided, and now provides, by §3672 of the Political Code of California:

> "The board of supervisors of each county must meet on the first Monday of July in each year, to examine the assessment-book and equalize the assessment of property in the county. It must continue in session for

that purpose, from time to time, until the business of equalization is disposed of, but not later than the third Monday in July."

§3705, Political Code, provided under the same title:

"The state board of equalization may, by an order entered upon its minutes, and certified to the county auditor of any county, extend, for not exceeding twenty days, the time fixed in this title for the performance of any act by the county assessor, county auditor, or county boards of equalization."

§3673, Political Code, provided:

"The board has power, after giving notice in such manner as it may by rule prescribe, to increase or lower the entire assessment-roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said roll, and make the assessment conform to the true value of such property in money."

§3674, Political Code, provided:

"No reduction must be made in the valuation of property, unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by his oath showing the facts upon which it is claimed such reduction should be made."

In the case at bar it is not denied that the board of equalization provided by statute met, nor is it claimed that Daniel Givens, or any person for him, made any objection to the assess-

ment. The tax levied under this assessment became due, remained unpaid and therefore delinquent—the first half thereof on the last Monday in November, 1898, and the second half thereof on the last Monday in April, 1899. The statute—§§3756 and 3758, Political Code—provided for certain penalties to be added to "all taxes" then unpaid.

There is no claim that this was not done according to said law.

§3759 of the same code provided:

> "On the third Monday in May of each year, in each of the counties, and cities and counties of this state, the tax collector must attend at the office of the auditor with the assessment book, having all items of taxes and penalties collected marked 'paid,' and at the same time he shall deliver to the auditor a complete delinquent list of all persons and property then owing taxes."

This delinquent tax list was duly made. [Tr. fol. 5.]

§3764, Political Code, provided:

> "On or before the fifth day in June of each year the tax collector must publish the delinquent list, which must contain the names of the persons and a description of the property delinquent, and the amount of taxes, penalties, and costs due, opposite each name and description, with the taxes due on personal property, the delinquent state, poll, road, and hospital tax, the taxes

due each school, road, or other lesser taxation district, added to the taxes on real estate, where the real estate is liable therefor, or the several taxes are due from the same person. The expense of the publication to be a charge against the county, or city and county."

§3765, Political Code, provided:

"The tax collector must append and publish with the delinquent list a notice that unless the taxes delinquent, together with the costs and penalties, are paid, the real property upon which such taxes are a lien will be sold."

§3767, Political Code, provided:

"The publication must designate the day and hour when the property will, by operation of law, be sold to the state, which sale must not be less than twenty-one nor more than twenty-eight days from the time of the first publication, and the place shall be in the tax collector's office."

The publication required under §3764, §3765 and §3767 of the Political Code were made according to the provisions of §3766 of said code. [Tr. fol. 6.]

§3771, Political Code, provided:

"On the day and hour fixed for the sale, all the property delinquent, upon which the taxes of all kinds, penalties, and costs have not been paid, shall, by operation of law and the declaration of the tax collector, be sold to the state, and said tax collector shall make an entry, 'Sold to the state,' on the

delinquent assessment list, opposite the tax, and he shall be credited with the amount thereof in his settlement, made pursuant to sections three thousand seven hundred and ninety-seven, three thousand seven hundred and ninety-eight, and three thousand seven hundred and ninety-nine; provided, that on the day of sale the owner or person in possession of any property offered for sale for taxes due thereon, may pay the taxes, penalties and costs due;

"And provided further, that when the original tax amounts to the sum of three hundred dollars or more upon any piece of property or assessment delinquent, the state may bring suit against the owner of said property for the collection of said tax or taxes, penalties, and costs, as provided in section three thousand eight hundred and ninety-nine."

§3776, Political Code, provided:

"The tax collector must make out a certificate of delinquent tax sale for each piece or tract of land sold, dated on the day of the sale, stating (when known) the name of the person assessed, a description of the land sold, that it was sold for delinquent taxes to the state, and giving the amount and year of the assessment, and specifying when the state will be entitled to a deed."

§3777, Political Code, provided:

"Such certificate must be signed by the tax collector, regularly numbered in a book, and the book must be filed in the office of the county recorder, and when so filed, with the recorder's filing on each certificate in said book, it must be regarded as

recorded in the recorder's office. The state controller shall prescribe the form of such certificate of sale and record book. The recorder must index such certificates of sale in an index book, kept for that purpose, the form of which shall be prescribed by the state controller. In case of a redemption, or a subsequent sale of any of said property by the state, the recorder must enter on the margin of the certificate, describing such property in said certificate book of record in his office, the fact of such redemption or sale, giving the date thereof, and by whom redeemed."

Pursuant to the foregoing statutes said lot 34 was sold to the state on July 1, 1899, and the certificate provided for by §3776 Pol. Code was made and recorded as required by law, reciting that unless said real estate was redeemed the purchaser thereof would be entitled to a deed thereof on the 2nd day of July, 1904. [Tr. fols. 6-7.]

§3780, Political Code, provided:

"A redemption of the property sold may be made by the owner, or any party in interest, within five years from the date of the sale to the state, or at any time prior to the entry or sale of said land by the state, in the manner provided by section three thousand eight hundred and seventeen."

§3785, Political Code, provided:

"If the property is not redeemed within the time allowed by law for its redemption,

the tax collector, or his successor in office, must make the state a deed of the property, reciting in such deed the name of the person assessed (when known), the date of sale, a description of the land sold, the amount for which it was sold, that it was sold for delinquent taxes, giving the assessed value and the year of assessment, the time when the right of redemption had expired, and that no person has redeemed the property in the time allowed by law for its redemption."

It is not claimed that the property was redeemed within the said period of five years, and on July 2nd, 1904, a deed was made to the state by the tax collector which was recorded in the office of the county recorder of Los Angeles county on July 19, 1904.

§3786, Political Code, provided:

"The matters recited in the certificate of sale must be recited in the deed, and such deed, duly acknowledged or proved, is primary evidence that:

"1. The property was assessed as required by law;

"2. The property was equalized as required by law;

"3. The taxes were levied in accordance with law;

"4. The taxes were not paid;

"5. At a proper time and place the property was sold as prescribed by law, and by the proper officer;

"6. The property was not redeemed;

"7. The person who executed the deed was the proper officer;

"8. Where the real estate was sold to pay taxes on personal property, that the real estate belonged to the person liable to pay the tax."

§3787, Political Code, provided:

"Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of the regularity of all other proceedings, from the assessment by the assessor, inclusive, up to the execution of the deed. Such deed conveys to the state the absolute title to the property described therein, free of all encumbrances, except when the land is owned by the United States, or this state, in which case it is *prima facie* evidence of the right of possession, accrued as of the date of the deed to the state."

§3788, Political Code, provided:

"Such deed conveys to the state the absolute title to the property described therein, as of the date of the expiration of the period of five years from the date of the sale of said property to the state, free of all encumbrances, except when the land is owned by the United States or this state, in which case it is *prima facie* evidence of the right of possession, accrued as of the date of the deed to the state."

§3789, Political Code, provided:

""The assessment book or delinquent list, or copy thereof, certified by the county auditor, showing unpaid taxes against any person or property, is *prima facie* evidence of the assessment, the property assessed, the delinquency, the amount of taxes due

and unpaid, and that all the forms of law in relation to the assessment and levy of taxes have been complied with."

§3817, Political Code, provided:

"In all cases where real estate has been sold, or may hereafter be sold for delinquent taxes to the state, and the state has not disposed of the same, the person whose estate has been, or may hereafter be sold, his heirs, executors, administrators, or other successors in interest, shall, at any time after the same has been sold to the state, and before the state shall have disposed of the same, have the right to redeem such real estate by paying to the county treasurer of the county wherein the real estate may be situated, the amount of taxes, penalties and costs due thereon at the time of said sale, with interest on the aggregate amount of said taxes, at the rate of seven per cent per annum; and also all taxes that were a lien upon said real estate at the time said taxes became delinquent; and also all unpaid taxes of every description assessed against the property for each year since the sale; or, if not so assessed, then upon the value of the property as assessed in the year nearest the time of such redemption, with interest from the first day of July following each of said years, respectively at the same rate, to the time of redemption; and also all costs and expenses of such redemption, and

"Penalties as follows, to-wit: Ten per cent if redeemed within six months from the date of sale; twenty per cent if redeemed within one year therefrom; thirty per cent if redeemed within two years therefrom; forty per cent if redeemed with-

in three years therefrom; forty-five per cent if redeemed within four years therefrom; and fifty per cent, if redeemed within five or any greater number of years therefrom. The

"Penalty shall be computed upon the amount of each year's taxes in like manner, reckoning from the time when the lands would have been sold for the taxes of that year, if there had been no previous sales thereof."

The auditor made an estimate of the amount necessary to purchase lot 34 from the state. [Tr. fol. 9.]

§3897, Political Code, provided:

"Whenever the state shall become the owner of any property sold for taxes and the deed to the state has been filed with the controller as provided in section three thousand seven hundred and eighty-five, the controller may thereupon by a written authorization direct the tax collector of the county or city and county to sell the property or any part thereof as in his judgment he shall deem advisable in the manner following: He must give notice of such sale by first publishing a notice for at least three successive weeks in some newspaper published in the county or city and county, or if there be no newspaper published therein, then by posting a notice in three conspicuous places in the county or city and county, one of which shall be at the United States postoffice nearest the land, in addition to a notice conspicuously posted on the land itself for the same period.

"Such notices must state specifically the place of and the day and hour of sale and shall contain a description of the property to be sold and shall also contain a detailed statement of all the delinquent taxes, penalties, costs and expenses up to the date of such sale and shall give the name of the person to whom the property was assessed for each year on which there may be delinquent taxes against said property or any part thereof and said notice shall also embody a copy of the authorization received from the controller. It shall be the duty of the tax collector to mail a copy of said notice, postage thereon prepaid, to the party to whom the land was last assessed next before the sale, if such address be known.

"At the time set for such sale, the tax collector must sell the property described in the controller's authorization and said notices, at public auction to the highest bidder for cash in lawful money of the United States; but no bid shall be received or accepted at such sale for less than the amount of all the taxes levied upon such property and all interests, costs, penalties and expenses up to the date of such sale; provided, however, that if the board of supervisors of the county, or city and county, in which any such property is situate, shall, by resolution entered upon their minutes, declare that, in their judgment, the property so owned by the state, and particularly described in said resolution, is not at that time of value great enough that it can be sold by the state for a sum equal to the amount of all taxes levied upon said property, and all interests, costs and penalties and expenses up to the date of such sale,

and that it would be to the best interest of the state to sell the said property for a sum to be stated in said resolution less than the sum above named upon receipt of a copy of said resolution, certified by the clerk of said board of supervisors, the state controller may thereupon, by written authorization, direct the tax collector of the county, or city and county, to sell the said property so described in said resolution for a sum not less than the sum stated in said resolution, together with the expenses of sale. The expense of giving the notice herein required shall be a charge against the county."

Pursuant to said statute the state controller on Jan. 3rd, 1905, authorized the sale of said lot 34. [Tr. fols. 10-12.]

§3898, Political Code, provided:

"The moneys received from such sale shall be distributed as follows: The tax collector shall deduct the penalties, costs and other amounts received as expenses of such sale in such cases as the property so sold shall have been sold for a sum not less than the amount of all taxes levied thereon and all interests, costs and penalties up to the date of such sale, but where the property so sold shall have been sold for a sum less than said amount, the tax collector shall deduct only the amounts received as expenses attending such sale, and the balance shall be distributed between the state and the county, or city and county, in the proportion that the state rate bears to the county, or city and county, rate of taxation; said tax collector shall pay all

amounts into the county treasury, and the treasurer shall account to the state for its portion in the settlement required by section three thousand eight hundred and sixty-five and section three thousand eight hundred and sixty-six.

"On receiving the amount bid, as prescribed in the preceding section, *the tax collector must execute a deed to the purchaser,* reciting the facts necessary to authorize such sale and conveyance, which deed shall convey all the interest of the state in and to such property, and shall be *prima facie* evidence of all facts recited therein."

The required notice was given [Tr. fols. 12-13]; and on Feb. 11th, 1905, the said lot was sold to George Zobelein, the defendant in error, for $166.00, and the deed [Tr. fols. 14-18] was delivered to him and recorded, who since said time has asserted and now asserts the absolute ownership of the lot in question.

Plaintiff in error claims under deeds from Daniel Givens to have succeeded to his title, or a portion thereof, and contends that the tax deed under which defendant in error claims is void, for many reasons *inter alia* that the provisions of the California law as to tax sales contravenes the provisions of the constitution of the state of California and is repugnant to the provision of the fifth amendment to the Federal Constitution, and of that portion of the fourteenth amendment to the constitution of the

United States providing: "No state shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws," and that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of * * * property without due process of law." All of which contentions have been decided adversely to plaintiff in error by the highest court of the state of California.

ARGUMENT.

Every question as to the repugnance of the tax law of California to the 5th amendment to the Federal Constitution can be dismissed with a very few words, as it has been uniformly and many times held that the 5th amendment is a restriction only upon the federal government and has no reference to the exercise of powers by state governments. After the adoption of the Constitution it was feared that too great powers had been given to the federal government and thereupon twelve amendments limiting its powers were proposed at the first Congress and ten thereof adopted—as guarantees to the states of their safety and the pro-

tection of the citizens of the several states against undue federal encroachment.

Kelly v. Pittsburg, 104 U. S. 78;
Withers v. Buckley, 61 U. S. 84;
Davidson v. New Orleans, 96 U. S. 97;
Hunter v. Pittsburg, 207 U. S. 161.

In Withers v. Buckley, *supra*, the court says:

"The statute of Mississippi is next assailed on the charge that it violates the 5th article of the amendments of the Constitution of the United States, of which the clause in the Constitution of Mississippi, relied on by the plaintiff in error, is a literal transcript. * * *

"To every person acquainted with the history of the federal government it is familiarly known that the ten amendments first engrafted upon the Constitution had their origin in the apprehension that in the investment of powers made by that instrument in the federal government, the safety of the states and their citizens had not been sufficiently guarded. That from this apprehension arose the chief opposition shown to the adoption of the Constitution. That, in order to remove the cause of this apprehension, and to effect that security which it was feared the original instrument had failed to accomplish, twelve articles of amendment were proposed at the first session of the first Congress, and the ten first articles in the existing series of amendments were adopted and ratified by Congress and by the states, two of the twelve proposed amendments having been rejected. The amendments thus adopted were designed to be modifications of the powers vested in the federal government, and their

language is susceptible of no other rational, literal, or verbal acceptation. In this acceptation this court has repeatedly and uniformly expounded those amendments in cases having reference to retroactive statutes, to the right of eminent domain, to the execution of plans for internal improvement; in opposition to which, the clause in the fifth article of the amendments of the Constitution has been urged. In all such cases, this court has ruled that the clause in question was applicable to the federal government alone, and not to the states, except so far as it was designed for their security against federal power. Indeed, so full, so emphatic, and conclusive, is the doctrine of this court, as promulgated by the late Chief Justice Marshall in the case of *Baron v. The Mayor etc. of Baltimore,* in the 7th of Peters, pp. 247, 248, that it would seem to require nothing less than an effort to unsettle the most deliberate and best considered conclusions of the court, to attempt to shake or disturb that doctrine. An extract from the reasoning of the chief justice, so full, so unanswerable on this point, may not be unfruitful of benefit as a guide to the future. After stating that the case was brought before the virtue of the 25th section of the Judiciary Act, the chief justice proceeded: "The plaintiff in error contends that it comes within that clause of the fifth amendment to the Constitution which inhibits the taking of private property for public use without just compensation. He insists that this amendment, being in favor of the liberty of the citizen, ought to be so construed as to restrain the legislative power of a state, as well as that of the United States. If this

proposition be untrue, the court can take no jurisdiction of the cause.

" 'The question thus presented we think of great importance, but not of much difficulty.

" 'The Constitution was ordained and established by the people of the United States for themselves; for their own government, and not for the government of the individual states. Each state established a Constitution for itself, and in that Constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best adapted to promote their interests. The powers conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and we think necessarily, applicable to the government created by the instrument. They are limitations of power granted by the instrument itself; not of distinct governments, framed by different persons, and for different purposes.

" 'If these proposition be correct, the fifth amendment must be understood as restraining the power of the general government, not as applicable to the states. In their several Constitutions they have imposed such restrictions on their respective governments as their own wisdom suggested; such as they deemed most proper for themselves. It is a subject on which they judge exclusively, and with which others interfere no farther than they are supposed to have a common interest.' "

The court further quotes from Chief Justice Marshall:

> "'In compliance with a sentiment thus generally expressed, to quiet fears thus extensively entertained, amendments were proposed by the required majority in Congress and adopted by the states. These amendments contain no expression indicating an intention to apply them to the state governments. This court cannot so apply them.'"

In Kelley v. Pittsburg, 104 U. S. 78, the court says, by Mr. Justice Miller:

> "As regards the effect of the 5th amendment of the Constitution, it has always been held to be a restriction upon the powers of the federal government and to have no reference to the exercise of such powers by the state governments. See *Withers v. Buckley*, 20 How. 84 (61 U. S. 84); Davidson v. New Orleans, 96 U. S. 97."

The 5th amendment is not restrictive of state but only of national action.

Hunter v. Pittsburg, 207 U. S. 161.

It is urged by plaintiff in error at considerable length and by the citation of many authorities that the courts of California erred in the construction of the California Constitution and more particularly of the statutes of California providing the procedure for the collection of taxes; that the tax sale was not conducted according to law in that by the proper construc-

tion of the California law; that the tax collector "acted in excess of the powers belonging to such office" in selling the whole property when a lesser portion might have been sold; that the construction placed upon the tax laws by the Supreme Court made it operate unequally and not according to the assessed valuation; that the sale was not in accordance with the law as to sales under execution and that it constitutes a taking of private property without just compensation, and many other equally irrelevant objections, and upon these grounds urges that plaintiff in error is denied the equal protection of the laws and his property taken without due process of law, thereby being deprived of rights guaranteed under the state Constitution and under the Constitution of the United States.

It is well settled that the question whether a state statute is repugnant to the Constitution of such state cannot be reviewed by the Supreme Court of the United States. It is the privilege and duty of such courts to determine this question, and it is also the exclusive province of the state courts to construe the statutes of the state.

Commercial Bank v. Buckingham, 46 U. S. 317;

Withers v. Buckley, 20 How. 84, 61 U. S. 84;

Medberry v. Ohio, 24 How. 413;
Porter v. Foley, 24 How. 14;
Satterlee v. Matthewson, 2 Pet. 380;
Solomon v. Graham, 15 Wall. 208;
Tennessee Bank v. Citizens Bank, 13 Wall. 432;
Palmer v. Marston, 13 Wall. 10;
Seirer v. Haskall, 13 Wall. 12;
Jackson v. Lamphire, 3 Pet. 280;
Hunter v. Pittsburg, 207 U. S. 161.

It is the peculiar province and privilege of the state courts to construe their own statutes, and it is no part of the functions of the Supreme Court to review their decisions, except when specially authorized by statute, and the decision of a state court construing its own statute becomes the rule for the federal courts.

Adams v. Preston, 22 How. 473;
Congdon Mining Co. v. Goodman, 2 Black 574;
Scott v. Jones, 5 How. 243;
Smith v. Adsit, 16 Wall. 185;
Klinger v. Missouri, 13 Wall. 257;
Murray v. Gibson, 15 How. 421;
Nichols v. Levy, 5 Wall. 433;
Wade v. Walnut, 105 U. S. 1;
State R. R. Tax Cases, 92 U. S. 975;
Merchants etc. Bank v. Pennsylvania, 167 U. S. 461;
Kentucky Union Co. v. Kentucky, 219 U. S. 140;
Thompson v. Kentucky, 209 U. S. 340.

In *Withers v. Buckley*, 20 How. 84, 61 U. S. 84, the court holds that it has no authority, on a writ of error from a state court, to declare a state law void, on account of its collision with a state constitution. In that case it is charged that the Act of 1850 passed by the legislature of the state of Mississippi is void because it violates the Constitution of Mississippi by omitting to provide a compensation for the injury which might be done to individuals by carrying that law into effect, the Constitution of the state having declared that private property shall not be taken for public use without just compensation. The court says:

> "In answer to this charge, it is sufficient to state that this court never has, and does not, assume the right to pronounce authoritatively upon the wisdom or justice of the legislation of the states, when operating upon their own citizens, and upon subjects of property clearly within their own territory and appropriate cognizance, except so far as the Constitution of the United States expressly, or by inevitable implication, may have made it the duty of this court to control the action of the state governments. Nor has it been deemed the province of this court to abrogate or overrule the interpretation put upon their own respective statutes by the courts of the several states, whether such interpretation had reference to the ordinary rights of person or property, or to the nature and extent of the legislative powers vested by the Constitutions of the several states, and their

> coincidence with acts of legislation performed under the delegation of those powers. These are functions wisely and necessarily left by this court untouched in the state tribunals, the assumption of which by the federal judiciary, as it would embrace every matter upon which the governments of the states could operate, would, in effect, amount to the annihilation of those governments. The doctrine of this court as here stated has been clearly affirmed." Citing with approval *Jackson v. Lamphire,* 3 Pet. 280.

In McMillen v. Anderson, 95 U. S. 37, plaintiff took an appeal to the Supreme Court of Louisiana, and in his petition for appeal alleged that the law under which the proceedings of defendant were had is void, because it is in conflict with the Constitutions of Louisiana and of the United States, and, as he now argues, is specifically opposed to the provision of the 14th amendment of the latter, which declares that no state shall deprive any person of life, liberty or property, without due process of law. Mr. Justice Miller says:

> "The judgment of the Supreme Court of Louisiana, to which the present writ of error is directed, affirming that of the inferior court, must be taken as conclusive on all the questions mooted in the record except this one."

In Davidson v. New Orleans, 96 U. S. 97, this court said by Mr. Justice Miller:

> "The objections raised in the state courts to the assessment were numerous and varied, including constitutional objections to the statute under which the assessment was made, and alleged departures from the requirements of the statute itself. The only federal question is, whether the judgment is not in violation of that provision of the Constitution which declares that 'No state shall deprive any person of life, liberty, or property without due process of law,' the argument seems to suppose that this court can correct any other error which may be found in the record."

In Jackson v. Lamphire, 3 Peters 280, the court says:

> "This court has no authority on a writ of error from a state court to declare a state law void on account of its collision with a state constitution, it not being a case embraced in the Judiciary Act, which alone gives the power to issue a writ of error in this case."

Kelly v. Pittsburgh (14 Otto 78-83), 104 U. S. 78, was a case where plaintiff in error, James Kelly, was the owner of eighty acres of land which, prior to the year 1867, was a part of the township of Collins. In that year the legislature of Pennsylvania passed an act by virtue of which and the subsequent proceedings under it, this township became a part of the city of Pittsburgh. The authorities of that city

assessed the land in question for the taxes of the year 1874 at a sum which the plaintiff asserts to be enormously beyond its value, and which, he alleges, is almost destructive of his interest in the property. The laws of Pennsylvania allow an appeal from the original assessment of taxes to a board of revision, and Kelly took such appeal, with what success does not distinctly appear. The result, however, was unsatisfactory to him and he brought a suit to restrain the collection of the tax by the city authorities. There was an answer to this bill, a replication, and a reference to a master, on whose report that court dismissed the bill, and the decree was affirmed on appeal by the Supreme Court of the state. To the judgment of affirmance a writ of error was taken to the Supreme Court of the United States, in which the following errors were urged: (1) The Supreme Court of Pennsylvania erred in sustaining the authorities of the city of Pittsburgh to assess and collect taxes from complainant's farm lands for municipal or city purposes, such exercise of the taxing power being a violation of the rights of complainant as guaranteed to him by article V of amendments to the Constitution of the United States; and (2) the Supreme Court of Pennsylvania erred in sustaining the authority of the city of Pittsburgh to assess and collect taxes from complainant's farm

lands for municipal or city purposes, such exercise of the taxing power being a violation of the rights of complainant as guaranteed to him by article XIV, section 1, of the amendments to the Constitution of the United States, as the provision of section 1, article XIV, of the amendments relied on in the second assignment of errors contains a prohibition on the power of the states in language almost identical with that of the 5th amendment above referred to. That language is that "No state shall * * * deprive any person of life, liberty or property without due process of law."

The court further says:

> "It is urged, however, with much force, that though land of this character, land which its owner has not laid off into town lots, but which he insists on using as agricultural land, through which no streets are run or used, cannot be, even by the legislature, subjected to the taxes of a city, the water tax, the gas tax, the street tax, and others of similar character. The reason for this is said to be that such taxes are for the benefit of those in a city who own property within the limits of such improvements and who use, or might use them if they choose, while the owner of this land reaps no such benefit. Cases are cited from the higher courts of Kentucky and Iowa where this principle is asserted, and where those courts have held that farm lands in a city are not subject to the ordinary city taxes.

> *"It is no part of our duty to inquire into the grounds on which those courts have so decided. They are questions which arise between the citizens of those states and their own city authorities, and afford no rule for construing the Constitution of the United States."*

In Wade v. Walnut (15 Otto 1-3), 105 U. S. 1, the Supreme Court of Illinois held that the section of the Illinois Constitution adopted in 1870 relating to "Municipal Subscription to Railroads or Private Corporations" took effect July 2, 1870, and that such holding was binding upon the Supreme Court of the United States. Likewise in Pittsburg v. Backus, 154 U. S. 421, this court said:

> "The decision of the Supreme Court of Indiana in this case is conclusive upon us that the Constitution of that state authorizes just the method of assessment adopted in this case."

Merchants' etc. Bank v. Pennsylvania, 167 U. S. 461, was an action brought on a writ of error to the Supreme Court of the state of Pennsylvania, and involves the validity of the statute of that state of date June 8, 1891, in respect to the taxation of national banks. Mr. Justice Brewer says:

> "The validity of this statute is challenged by plaintiff in error on three grounds: The first is, that its operation results in a lack of uniformity of taxation upon the same

class of subjects, to-wit, shares of national banks within the state; and the argument of counsel is that it conflicts with Pa. Const., Art. 9, §1, which requires that 'all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.'

"It is sufficient to say in reference to this contention that the decision of the Supreme Court of the state of Pennsylvania sustaining the statute is conclusive in this court, as to any question of conflict between it and the state Constitution." Citing *West River Bridge Co. v. Dix*, 47 U. S., 6 How. 507; *Bucher v. Cheshire R. Co.*, 125 U. S. 555; *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232; *Lewis v. Monson*, 151 U. S. 545; *Adams Exp. Co. v. Ohio State Auditor*, 165 U. S. 194; *Long Island Water Supply Co. v. Brooklyn*, 166 U. S. 685.

And the same learned jurist in Pittsburg v. Backus, 154 U. S. 421, says:

"The decision of the Supreme Court of the state removes from this case all questions of conflict between the act and the Constitution of the state, and the only matter remaining for our consideration is whether there is in the act as administered any trespass upon rights which the federal Constitution secures to the plaintiff."

And it is said in Wotherspoon v. Duncan, 4 Wall. 217:

"It is not the province of this court to interfere with the policy of the revenue laws of the state nor with the interpretation given to them by their courts."

In the late case of Kentucky Union Co. v. Kentucky, 219 U. S. 140, this court said:

> *"We* must therefore take the act as the court of appeals of Kentucky has construed it."

> "It is the province of the courts (of the state) to interpret the laws of the state."
>
> Thompson v. Kentucky, 209 U. S. 340.

In Hunter v. Pittsburg, 207 U. S. 161, this court says:

> "We have nothing to do with the interpretation of the Constitution of the state and the conformity of the enactment of the assembly to that Constitution; those questions are for the consideration of the courts of the state, and their decision of them is final."

Conformation of state laws and statutes to the Constitution of the state is left to the state courts.

> Hunter v. Pittsburg, 207 U. S. 161;
>
> Seaboard v. Siegers, 207 U. S. 73;
>
> Waters-Pierce Oil Co. v. Texas, 212 U. S. 112.

Under the most recent rule laid down by this court, and one most favorable to plaintiff in error, as to the power of this court to review the interpretation given the Constitution or statute of a state by its own Supreme Court, as expressed in *Straus v. Foxworth*, 231 U. S.

162, the interpretation must be manifestly wrong before it will be reviewed. This was an action similar to the one at bar, and Mr. Justice Van Devanter, delivering the opinion of the court, says:

> "The Supreme Court of the territory (N. M.) construed the words * * * and we think this was right. At least we cannot say that it was manifestly wrong, as must be done to justify us in rejecting the local interpretation of a territorial statute." Citing
>
> Fox v. Haarsteck, 156 U. S. 674-679;
>
> Treat v. Grand Canyon Ry. Co., 222 U. S. 448-452.

There is no inhibition in the federal Constitution against the state taking private property without just compensation. The 5th amendment applies to the general government and not to the states, and in the 14th amendment this provision was omitted *ex industria.*

Davidson v. New Orleans, 96 U. S. 97.

Nowhere in the record nor in the brief of the plaintiff in error is any claim made that each and every step and proceeding was not taken as required by the California statute as construed by the California Supreme Court, but that the sale of the property in question is illegal and void under the state and federal Constitutions. The question of the state Constitution and the 5th amendment having been disposed of the

only question remaining, and in fact the only federal question before the court is,

DOES THE CALIFORNIA LAW AS TO TAX SALES CONTRAVENE THE 14TH AMENDMENT TO THE FEDERAL CONSTITUTION?

Did the sale in question take the property of the plaintiff in error without due process of law, or does it deny to him the equal protection of the laws?

Plaintiff in error complains that the California method of selling for taxes constitutes an unequal, arbitrary and oppressive exercise of the taxing power of the state, that the operation of the statutes provided for the collection of taxes as construed by the state Supreme Court renders taxation unequal, but the highest court of the state has held that all of these proceedings are in conformity with the state laws and that the state laws are in harmony with the fundamental law of the state.

However unequal, arbitrary, oppressive or unjust state laws may be, the federal courts can afford no relief unless an immunity against the same is guaranteed by the federal Constitution, and no guaranty is contained in that instrument except the provisions of section 1 of the 14th amendment, viz.:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,

nor shall any state deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

The system of tax sales under the California law does not deny the plaintiff due process of law nor the equal protection of the laws.

Before the assessment became final under which the tax was levied for the non-payment of which the property of plaintiff in error's predecessor in interest was sold, and on the "first Monday of July," 1898, the board of supervisors of Los Angeles county, in which the property is situated, met "to equalize the assessment of property in the county" (Pol. Code, §3672). The board had power to "increase or lower the entire assessment roll or any assessment contained in said roll and make the assessment conform to the true value" (Pol. Code, §3673). The owner of the property could have had the assessment equalized. The taxes having become delinquent and "on or before the 5th day in June," 1899, the tax collector published a delinquent tax list containing the description of the property of plaintiff in error and the names of the owners and a notice that unless the taxes delinquent and costs and penalties were paid said property would be sold to the state of California on Saturday the 1st day

of July, 1899, at 10 a. m., at the office of th county tax collector at the court house in th city of Los Angeles. A certificate of sale o the property was recorded in the office of th county recorder of Los Angeles county, whic said certificate recited that "unless the said rea estate is redeemed within five years from dat (July 1, 1899) of sale to the state, the pur chaser thereof will be entitled to a deed thereo on the 2nd day of July, 1904."

On July 2nd, 1904, the tax collector of Lo Angeles county duly executed a deed of th property to the state of California, which dee was duly recorded in the office of the count recorder of Los Angeles county on July 1 1904.

Thereafter the auditor of Los Angeles count made the estimate required by law, and o January 3rd the controller of the state of Cali fornia issued to the tax collector of Los Ang eles county written authorization to sell th property in question purchased by the state o January 20th, 1905—a public notice, containin a copy of the controller's authorization tha said property would be sold at public auctio in pursuance of law on Saturday, the 11th da of February, 1905, at 10 o'clock a. m., at th broadway entrance of the court house of Lo Angeles county. This notice was published "fo at least three weeks in some newspaper in th

county" before the day of sale, and at the time and place mentioned in the notice said lot 34 was sold to the defendant in error by the state.

These proceedings constitute due process of law under the 14th amendment, and as they apply equally to all persons refusing and neglecting to pay when due taxes assessed by the state taxing power they also constitute an equal protection of the laws thereunder

There is no federal inhibition against state taxation upon the ground that it is unequal, unjust, oppressive, onerous or ill-advised. The federal courts cannot determine the uniformity, wisdom, justice or policy of state legislation.

> "In answer to this charge, it is sufficient to state that this court never has, and does not, assume the right to pronounce authoritatively upon the wisdom or justice of the legislation of the states, when operating upon their own citizens, and upon subjects of property clearly within their own territory and appropriate cognizance, except so far as the Constitution of the United States expressly, or by inevitable implication, may have made it the duty of this court to control the action of the state governments."
>
> Withers v. Buckley, 61 U. S. 84.

This court in *Davidson v. New Orleans*, 96 U. S. 97, speaking of a tax, uses the following language:

> "It may violate some provision of the state Constitution against unequal taxa-

> tion; but the federal Constitution imposes no restraints on the states in that regard."

In Kelly v. Pittsburg, 104 U. S. 78, the court, in speaking of the collection of a tax and its possible inequality in operation, says:

> "Clearly, however, these are matters of detail within the legislative discretion and, therefore, of power in the law-making body within whose jurisdiction the parties live. This court cannot say in such cases, however great the hardship or unequal the burden, that the tax collected for such purposes is taking the property of the taxpayer without due process of law. These views have heretofore been announced by this court in the cases of *Kennard v. Morgan,* 92 U. S. 481; *Kirtland v. Hotchkiss,* 92 U. S. 575; *McMillan v. Anderson,* 95 U. S. 37."

In the case of Memphis Gas Light Co. v. Taxing District of Shelby County, Tennessee, 109 U. S. 398, the court says, by Mr. Justice Miller:

> "The Constitution of the United States does not profess in all cases to protect property from unjust or oppressive taxation by the states. That is left to the state constitutions and state laws."

In Kirtland v. Hotchkiss, 100 U. S. 491, Mr. Justice Harlan aptly says:

> "It may, therefore, be regarded as the established doctrine of this court, that so long as the state, by its system of taxation, does not intrench upon the legitimate au-

thority of the Union, or violate any right recognized or secured to the citizens by the Constitution of the United States, this court, as between the citizen and his state, can afford no relief against state taxation, however unjust, oppressive or onerous.

"Whether the state of Connecticut shall measure the contribution which persons resident within its jurisdiction shall make by way of taxes, in return for the protection it affords them, by the value of the credits, choses in action, bonds, or stocks which they may own (other than such as are exempted or protected from taxation under the Constitution and laws of the United States), is a matter which concerns only the people of that state, and with which the Federal government cannot rightly interfere."

In Merchants Bank v. Penn. 167 U. S. 461, the court says:

"If it be said that a lack of uniformity renders the statute obnoxious to that part of the fourteenth amendment to the Federal Constitution which forbids a state to 'deny to any person within its jurisdiction the equal protection of the laws,' it becomes important to see in what consists the lack of uniformity. It is not in the terms or conditions expressed in the statute, but only in the possible results of its operation. Upon all bank shares, whether state or national, rests the ordinary state tax of 4 mills. To every bank, state and national, and all alike, is given the privilege of discharging all tax obligations by collecting from its stockholders and paying 8 mills on the dollar upon the par value of the

stock. * * * So it is possible, under the operation of this law, that one bank may pay at a less rate upon the actual value of its banking property than another; but the banks which do not make this election, whether state or national, pay no more than the regular tax. The result of the election under the circumstances is simply that those electing pay less. But this lack of uniformity in the result furnishes no ground of complaint under the Federal Constitution. Suppose, for any fair reason affecting only its internal affairs, the state should see fit to wholly exempt certain named corporations from all taxation. Of course the indirect result would be that all other property might have to pay a little larger rate per cent in order to raise the revenue necessary for the carrying on of the state government, but this would not invalidate the tax on other property, or give any right to challenge the law as obnoxious to the provisions of the Federal Constitution.

"Again it will be perceived that this inequality in the burden results from a privilege offered to all, and in order to induce prompt payment of taxes, and payment without litigation. To justify the propriety of such inducement, we need look no further than the present litigation. It is common practice in the states to offer a discount for payment before the specified time, and impose penalties for non-payment at such time. This, of course, results in inequality of burden, but it does not invalidate the tax. The inequality of result comes from the election of certain taxpayers to avail themselves of privileges offered to all. It was well said by Mr.

Justice Williams, speaking for the Supreme Court of Pennsylvania, in the opinion in the present case: 'The argument is that inequality of burden establishes the unconstitutionality of the law under which the tax is levied. If the validity of our tax laws depends upon their ability to stand successfully this test, there are none of them, then, can stand.' Indeed, this whole argument of a right under the Federal Constitution to challenge a tax law on the ground of inequality in the burdens resulting from the operation of the law is put at rest by the decision in *Bell's Gap R. Co. v. Pennsylvania,* 134 U. S. 232, in which case Mr. Justice Bradley, speaking for the court, said:

" 'The provision in the 14th amendment, that no state shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. We think that we are safe in saying that the 14th amendment was not intended to compel the states to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional

provisions and laws of some of the states, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material, but it would render nugatory those discriminations which the best interests of society require; which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice; and which every state, in one form or another, deems it expedient to adopt.'"

To the same effect, Magoun v. Ill. Trust Co., 170 U. S. 283-95.

Citizens of states cannot complain of state taxation upon the ground that it is unequal, unjust or oppressive if such taxation operates equally upon all in and under the same conditions and circumstances.

"The general purpose and scope of the 14th amendment, and the general qualifications necessary to be applied to it, are well stated in *Barber v. Connolly,* 113 U. S. 27, 31 (28, 923, 924). Mr. Justice Field, in delivering the opinion of the court, there said: 'The 14th amendment in declaring that no "State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," undoubtedly intended not only that there should be no arbitrary deprivation of life, liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like

> circumstances in the enjoyment of their personal and civil rights.'"
>
> Bell's Gap R. R. Co. v. Penn., 134 U. S. 232.

And whenever the law operates alike on all persons and property, similarly situated, equal protection cannot be said to be denied. *Wurts v. Hoagland*, 114 U. S. 606 (29:229); *Richmond F. & P. R. Co. v. Richmond*, 96 U. S. 529 (24:737); Kentucky R. R. Cases, 115 U. S. 321. The remedy for abuse is in the state courts; for, in the language of Mr. Justice Field in *Mobile Co. v. Kimball*, "This court is not the harbor in which the people of the city or county can find a refuge from ill-advised, unequal and oppressive state legislation."

Tax proceedings may be summary and that fact is no evidence that they lack due process of law or deny the equal protection of the laws.

In Kirtland v. Hotchkiss, 100 U. S. 491, after citing *St. Louis v. Ferry Co.*, 11 Wall. 423, and *State Tax on Foreign Held Bonds*, 15 Wall. 300, the court continues:

> "In the last named case we said that 'Unless restrained by provisions of the Federal Constitution, the power of the state as to the mode, form and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction.'

> "We perceive no reason to modify the principles announced in these cases or to question their soundness. They are fundamental and vital in the relations which under the Constitution of the United States exist between the Federal and state governments. Upon their strict observance depends, in no small degree, the harmonious working of our complex system of government, Federal and state."

In Leigh v. Green, 193 U. S. 77, the right to provide summary proceedings to collect taxes is fully recognized.

> "The most summary methods of seizure and sale for the satisfaction of taxes and public dues have been held to be authorized, and not to amount to the taking of property without due process of law, as a seizure and sale of property upon warrant issued on ascertainment of the amount due by an administrative officer (Murray v. Hoboken Land & Improv. Co., 18 How. 272, 15 L. ed. 372), the seizure and forfeiture of distilled spirits for the payment of the tax (Henderson's Distilled Spirits, 14 Wall. 44, 20 L. Ed. 815)."

In Kentucky Union Co. v. Kentucky, 219 U. S. 140, the court uses the following language:

> "This court has had frequent occasion to comment upon the effect of this amendment in respect to laws of the states for the levy and collection of taxes. A summary procedure has been sustained where the person taxed has been allowed opportunity to be heard in opposition to the enforcement of taxes and penalties against him. In *Mc-*

Millen v. Anderson, 95 U. S. 37, 41, 24 L. Ed. 335, 336, this court said:

"'The mode of assessing taxes in the states by the Federal government, and by all governments, is necessarily summary, that it may be speedy and effectual.'"

The most summary methods of seizure and sale for satisfaction of taxes have been held to be authorized and not to amount to taking of property without due process of law as seizure and sale, etc.

Murray v. Hoboken Land & C. Co., 18 How. 272;

Leigh v. Green, 193 U. S. 79;

Winona Land Co. v. Minn., 159 U. S. 526.

The due process clause of the 14th amendment is fully satisfied in tax proceedings by a law which gives the property owner an opportunity to question the validity or the amount of the tax before the tax becomes final, either by proceedings in court or before a board of revision or equalization.

Davidson v. New Orleans, 96 U. S. 97;

Pittsburg v. Backus, 154 U. S. 421;

Cleveland v. Backus, 154 U. S. 439;

Hagar v. Irrigation Dist., 111 U. S. 701;

Palmer v. McMahon, 133 U. S. 660;

Bells Gap Ry. v. Penn., 134 U. S. 232-7;

Spencer v. Merchant, 125 U. S. 345;

Michigan Central Ry. Co. v. Powers, 201 U. S. 245;
Glidden v. Harrington, 189 U. S. 255;
Paulsen v. Portland, 149 U. S. 30;
Lent v. Tillson, 140 U. S. 316;
Weyerhaeuser v. Minn., 176 U. S. 550;
Winona v. Minn., 159 U. S. 526;
McMillen v. Anderson, 95 U. S. 37;
Cleveland v. Porter, 210 U. S. 177;
Hodge v. Muscatine, 196 U. S. 276;
Bristol v. Washington Co., 177 U. S. 133;
Gallup v. Schmidt, 183 U. S. 300;
Walker v. Sauvinet, 92 U. S. 90;
Orr v. Gilman, 183 U. S. 278;
Allen v. Ga., 166 U. S. 138;
Pittsburg v. Board of Public Works, 172 U. S. 32;
McLeod v. Receveur, 71 Fed. 455;
Sanford v. Poe, 69 Fed. 546.

The cases of Martin v. Snowden, and Bennett v. Hunter, 18 Gratt. 100, cited to support the contention that provisions of this nature of the California statute are unconstitutional under the Federal Constitution, are reviewed and answered by the Supreme Court of the United States in the case of King v. Mullins, 171 U. S. 404, where the question of the constitutionality of provisions in the Constitution of

West Virginia and an act of the legislature forfeiting lands for failure of the owners during a given period to have them placed upon the property books for taxation. In that case the state of West Virginia, in the exercise of its taxing power and as a means of enforcing the listing of property so they might be assessed and the taxes collected, passed the aforesaid law of forfeiture. Nothing could by its operation be more unequal. The mere retention of the balance of the price brought at a tax sale over and above the amount of taxes, interest and penalties, or the sale of the whole land where the sale of a lesser amount would bring sufficient to pay these taxes, interest and penalties, sinks into insignificance with an absolute forfeiture for the simple failure to list property where no assessment has been made, no amount found to be due and no lien established against the forfeited lands. Speaking first of Martin v. Snowden and Bennett v. Hunter (said cases having been consolidated), this court said:

> "This court did not deem it necessary in that case to decide whether the United States could constitutionally take to itself the absolute title to lands merely because of the non-payment of taxes thereon within a prescribed time, and without some proceeding equivalent to office found. Speaking by Chief Justice Chase, it said: 'We are first to consider whether the first

clause of this section, *proprio vigore,* worked a transfer to the United States of the land to be forfeited. The counsel for the plaintiff in error have insisted earnestly that such was its effect. But it must be remembered that the primary object of the act was, undoubtedly, revenue to be raised by collection of taxes assessed upon lands. It is true that a different purpose appears to have dictated the provisions relating to redemption after the sale, and to the disposition of the lands purchased by the government; a policy which had reference to the suppression of rebellion rather than to revenue. But this purpose did not affect the operation of the act before sale, for until sale actually made there could be, properly, no redemption. The assessment of the tax merely created a lien on the land, which might be discharged by the payment of the debt. And it seems unreasonable to give to the act, considered as a revenue measure, a construction which would defeat the right of the owner to pay the amount assessed and relieve his lands from the lien. The first clause of the act, therefore, is not to be considered as working an actual transfer of the land to the United States, if a more liberal construction can be given to it consistently with such a transfer. Without pausing to inquire whether, in any case, the title of a citizen to his land can be divested by forfeiture and vested absolutely in the United States, without any inquisition of record or some public transaction equivalent to office found, it is certainly proper to assume that an act of sovereignty so highly penal is not to be inferred from language capable of any milder construction."

Chief Justice Chase thereupon holds that under that law—

> "The title, indeed, was forfeited by nonpayment of the tax; in other words, it became subject to be vested in the United States, and, upon public sale, became actually vested in the United States or in any other purchaser; but not before such public sale."

The court then says:

> "We come now to an examination of the West Virginia Constitution and statutory provisions relating to the forfeiture to the state of lands subject to taxation.
>
> * * * * * *
>
> "Now the plaintiff contends that the provision in the Constitution of West Virginia which forfeits and vests absolutely in the state without inquisition of record, or some public transaction equivalent to office found, the title to lands which for five successive years after 1869 have not been charged with state taxes on the land books of the proper county, is repugnant to the first clause of the 14th amendment of the Constitution of the United States declaring that no state shall deprive any person of his property without due process of law.
>
> "In support of this contention numerous authorities have been cited by the plaintiff, those most directly in point being Griffin v. Mixon (cited by appellant), 38 Miss. 424, and Marshall v. McDaniel, 12 Bush, 378, 382-385.
>
> * * * * * *

"Much of the argument on behalf of the plaintiff proceeds upon the erroneous theory that all the principles involved in due process of law as applied to proceedings strictly judicial in their nature apply equally to proceedings for the collection of public revenue by taxation. On the contrary, it is well settled that very summary remedies may be used in the collection of taxes that could not be applied in cases of a judicial character.

* * * * * *

"The power to collect and disburse revenue, and to make all laws which shall be necessary and proper for carrying that power into effect, includes all known and appropriate means of effectually collecting and disbursing that revenue, unless some such means should be forbidden in some other part of the Constitution. The power has not been exhausted by the receipt of the money by the collector. Its purpose is to raise money and use it in payment of the debts of the government; and, whoever may have possession of the public money, until it is actually disbursed, the power to use those known and appropriate means to secure its due application continues. * * * It may be added, that probably there are few governments which do or can permit their claims for public taxes, either on the citizen or the officer employed for their collection or disbursement, to become subjects of judicial controversy, according to the course of the law of the land. Imperative necessity has forced a distinction between such claims and all others, which has sometimes been carried out by summary methods of proceeding and some-

times by systems of fines and penalties, but always in some way observed and yielded to.

* * * * * *

"The judiciary should be very reluctant to interfere with the taxing systems of a state, and should never do so unless that which the state attempts to do is in palpable violation of the constitutional rights of the owners of property. Under this view of our duty, we are unwilling to hold that the provision referred to is repugnant to the clause of the 14th amendment forbidding a denial of the equal protection of the laws.

"For the reasons stated, we hold that the system established by West Virginia, under which lands liable to taxation are forfeited to the state by reason of the owner not having them placed, or caused to be placed, during five consecutive years, on the proper land books for taxation, and caused himself to be charged with the taxes thereon, and under which, on petition required to be filed by the representatives of the state in the proper circuit court, such lands are sold for the benefit of the school fund, with liberty to the owner, upon due notice of the proceeding to intervene by petition and secure a redemption of his lands from the forfeiture declared by paying the taxes and charges due upon them, is not inconsistent with the due process of law required by the Constitution of the United States or the Constitution of the state."

In Hibben v. Smith, 191 U. S. 310, this court, by Mr. Justice Peckham, says:

> "Assuming the necessity of a hearing before an assessment can be made conclusive, the law may provide for that hearing by the body which levies the assessment, and after such hearing may make the decision of that body conclusive. * * *
>
> "Due process of law is afforded where there is an opportunity to be heard before the body which is to make the assessment and the legislature of a state may provide that such hearing shall be conclusive so far as the federal Constitution is concerned."

The question of what constitutes due process has been before the court in many and varied forms.

> "In the absence of any more specific constitutional restriction than the general prohibition against taking property without due process of law, the legislature of the state, having the power to fix the sum necessary to be levied for the expense of a public improvement, and to order it to be assessed, either like other taxes, upon property generally or only upon the lands benefited by the improvement, is authorized to determine both the amount of the whole tax, and the class of lands which will receive the benefit and should therefore bear the burden, although it may, if it sees fit, commit the ascertainment of either or both of these facts to the judgment of commissioners.
>
> "When the determination of the lands to be benefited is entrusted to commissioners, the owners may be entitled to notice and

hearing upon the question whether their lands are benefited and how much. But the legislature has the power to determine, by the statute imposing the tax, what lands, which might be benefited by the improvement, are in fact benefited; and if it does so, its determination is conclusive upon the owners and the courts, and the owners have no right to be heard upon the question whether their lands are benefited or not, but only upon the validity of the assessment, and its apportionment among the different parcels of the class which the legislature has conclusively determined to be benefited."

Spencer v. Merchant, 125 U. S. 345.

"The claim, then, is that the assessment in question did not constitute due process of law within the 14th amendment because of error in the name of the owner, although the assessment would have been due process if under the state law it had not been required to mention the name of the owner, that is to say, that the assessment is repugnant to the Constitution of the United States, because of the lesser when it would not have been in conflict with the Constitution for the greater omission. This deduction demonstrates the error of the proposition relied on, and it cannot be escaped by saying that although the state had the power, without violating due process of law, to dispense with the name, nevertheless where the state statute has directed the use of a name in making an assessment, a defective giving thereof renders the assessment wholly void and a want of due process of law. This argument is answered by *Williams v. Supervis-*

ors of Albany County, 122 U. S. 154 (30: 1088), where, in considering the power of a state as to the assessment and collection of taxes, speaking through Mr. Justice Field, it was said:

" 'The mode in which the property shall be appraised, by whom its appraisement shall be made, the time within which it shall be done, what certificate of their action shall be furnished, and when parties shall be heard for the correction of errors, are matters resting in its discretion. Where directions upon the subject might originally have been dispensed with, or executed at another time, irregularities arising from neglect to follow them may be remedied by the legislature, unless its action in this respect is restrained by constitutional provisions prohibiting retrospective legislation. It is only necessary, therefore, in any case, to consider whether the assessment could have been ordered originally without requiring the proceedings, the omission or defective performance of which is complained of, or without requiring them within the time designated. If they were not essential to any valid assessment, and therefore might have been omitted or performed at another time, their omission or defective performance may be cured by the same authority which directed them, provided, always, that intervening rights are not impaired.'

"The vice which underlies the entire argument of the plaintiff in error arises from a failure to distinguish between the essentials of due process of law under the 14th amendment, and matters which may or may not be essential under the terms of a state assessing or taxing law. The two

are neither correlative nor coterminous. The first, due process of law, must be found in the state statute, and cannot be departed from without violating the Constitution of the United States. The other depends on the law-making power of the state, and, as it is solely the result of such authority, may vary or change as the legislative will of the state sees fit to ordain. It follows that, to determine the existence of the one, due process of law is the final province of this court, whilst the ascertainment of the other, that is, what is merely essential under the state statute, is a state question within the final jurisdiction of courts of last resort of the several states. When, then, a state court decides that a particular formality was or was not essential under the state statute, such decision presents no federal question, providing always the statute as thus construed does not violate the Constitution of the United States, by depriving of property without due process of law. This paramount requirement being fulfilled, as to other matters the state interpretation of its own law is controlling and decisive. This distinction is pointed out by the decisions of this court."

Castillo v. McConnico, 168 U. S. 674.

In Pittsburg v. Backus, 154 U. S. 421, the court, by Mr. Justice Brewer, says:

"It is contended specifically that the act fails of due process of law respecting the assessment, in that it does not require notice by the state board at any time before the assessments are made final, and several authorities are cited in support of the

proposition that it is essential to the validity of any proceeding by which the property of the individual is taken that notice must be given at some time and in some form, before the final adjudication. But the difficulty with his argument is that it has no foundation in fact. *The statute names the time and place for the meeting of the assessing board, and that is sufficient in tax proceedings; personal notice is unnecessary.*

"In *'State R. Tax Cases,'* 92 U. S. 610 (23:672), are these words, which are also quoted with approval in the *Kentucky R. Tax Cases:*

" 'This board has its time of sitting fixed by law. Its sessions are not secret. No obstruction exists to the appearance of any one before it to assert a right, or redress a wrong; and, in the business of assessing taxes, this is all that can be reasonably asked.'

"Again, it is said that the act does not require the state board to grant to the railroad companies any hearing or opportunity to be heard for the correction of errors at any time after the assessments have been agreed upon by the board, and before they are made final and absolute, or before the final adjournment of the board, and also that it gives to the board arbitrary power to deny to plaintiffs any hearing at any time; but the fact and the law are both against this contention. The plaintiff did appear before the board, and was heard by its counsel and through its officers, and the construction placed by the Supreme Court of the state on the act—a construction which is conclusive upon this court—is

that the railroad companies are given the right to be present and to be heard.

* * * * * *

"Equally fallacious is the contention that, because to the ordinary taxpayer there is allowed not merely one hearing before the county officials, but also a right to appeal with a second hearing before the state board, while only one hearing before the latter board is given to railroad companies in respect to their property, therefore the latter are denied the equal protection of the laws. If a single hearing is not due process, doubling it will not make it so, and the power of a state to make classifications in judicial or administrative proceedings carries with it the right to make such a classification as will give to parties belonging to one class two hearings before their rights are finally determined, and to parties belonging to a different class only a single hearing. Prior to the passage of the Court of Appeal Act of Congress, in 1891, a litigant in the circuit court, if the amount in dispute was less than $5,000, was given but a single trial and in that court, while if the amount in dispute was over that sum the defeated party had a right to a second hearing and in this court. Did it ever enter into the thought of any one that such classification carried with it any denial of due process of law?"

In Ballard v. Hunter, 204 U. S. 241, the court says:

"In Davidson v. New Orleans, 96 U. S. 97, 24 L. Ed. 616, a proposition was laid down which has since been quoted many times. The court said, at pages 104 and

105, L. Ed., on pages 619 and 620: 'That whenever, by the laws of a state or by state authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections.' And Mr. Justice Bradley, in a concurring opinion, said, on pages 107 and 108, L. Ed., on pages 620 and 621, 'That in judging what is "due process of law," respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or none of these; and, if found to be suitable or admissible in the special case, it will be adjudged to be "due process of law."' "

It has been said by this court:

"The right to levy and collect taxes has always been recognized as one of the supreme powers of the state, essential to its maintenance, and for the enforcement of which the legislature may resort to such remedies as it chooses, keeping within those which do not impair the constitutional rights of the citizen. Whether property is taken without due process of law depends upon the nature of each particular

case. If it be such an exercise of power 'as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the classes to which the one in question belongs,' it is due process of law. Cooley, Const. Lim. 7th Ed. 506.

"The most summary methods of seizure and sale for the satisfaction of taxes and public dues have been held to be authorized, and not to amount to the taking of property without due process of law, as a seizure and sale of property upon warrant issued on ascertainment of the amount due by an administrative officer (Murray v. Hoboken Land & Improv. Co., 18 How. 272, 15 L. Ed. 372), the seizure and forfeiture of distilled spirits for the payment of the tax (Henderson's Distilled Spirits, 14 Wall. 44, 20 L. Ed. 815). The subject underwent a thorough examination in the case of Davidson v. New Orleans, 96 U. S. 97, 24 L. Ed. 616, in which Mr. Justice Miller, while recognizing the difficulty of defining satisfactorily due process of law in terms which shall apply to all cases, and the desirability of judicial determination upon each case as it arises, used this language: 'That whenever, by the laws of a state, or by state authority, a tax assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole state or of some limited portion of the community; and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property, as is appropriate to the nature of the case—the judgment in

such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections.' "

Leigh v. Green, 193 U. S. 79.

The question of what constitutes due process of law was fully considered by this court in Palmer v. McMahon, 133 U. S. 660, where it is said:

"The power to tax belongs exclusively to the legislative branch of the government, and when the law provides for a mode of confirming or contesting the charge imposed, with such notice to the person as is appropriate to the nature of the case, the assessment cannot be said to deprive the owner of his property without due process of law. *Spencer v. Merchant,* 125 U. S. 345 (31:763); *Walston v. Nevin,* 128 U. S. 578 (32:544). The imposition of taxes is in its nature administrative and not judicial, but assessors exercise quasi judicial powers in arriving at the value, and opportunity to be heard should be and is given under all just systems of taxation according to value.

"It is enough, however, if the law provides for a board of revision authorized to hear complaints respecting the justice of the assessment, and prescribes the time during which and the place where such complaints may be made. *Hagar v. Reclamation District,* 111 U. S. 701, 710 (28: 569, 571).

"The law of New York gave opportunity for objection before the tax commissioners (Laws of New York 1859, chap. 302, §10,

p. 681), and the plaintiff in error appeared and obtained a large deduction from the original valuation. If dissatisfied with the final action of the commissioners, he could have had that action reviewed on *certiorari*. Laws of New York 1859, chap. 302, §20, p. 684; *People v. Comrs. of Texas*, 71 U. S. 4 Wall. 244 (18:344). But he did not avail himself of this remedy."

In Bell's Gap Ry. Co. v. Pennsylvania, 134 U. S. 232, the court said:

"*As to the assessment of the tax of three mills upon the nominal or face value of the bonds, instead of assessing it upon the actual value.* This might have been subject to question under the state laws; but the state courts have upheld the assessment as valid. We are to accept it, therefore, as part of the state system of taxation, authorized by its constitution and laws. Then how does it violate any provision of the Constitution of the United States? It is contended that it violates the first section of the 14th amendment, which forbids a state to withhold from any person the equal protection of the laws. We do not perceive that the assessment in question transgresses this provision.

* * * * * *

"But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the state, sometimes called the police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources and add to its wealth and prosperity."

In Cleveland v. Porter, 210 U. S. 177, this court says:

> "Assessments made for the construction of public improvements are in the nature of a tax, and are subject to summary procedures, the same as state, county and municipal taxation; and the law does not contemplate that there should be a decree or order of court to make such assessment valid, but it is sufficient if there is a tribunal or committee created by the statute to hear and determine the correctness of such assessment, and a provision for due notice to the parties of such hearing. This is a full and complete compliance with the 14th amendment of the Constitution of the United States.
>
> "Cass Farm Co. v. Detroit, 181 U. S. 396, 45 L. Ed. 914, 21 Sup. Ct. Rep. 644; Detroit v. Parker, 181 U. S. 399, 45 L. Ed. 917, 21 Sup. Ct. Rep. 624; Webster v. Fargo, 181 U. S. 394, 45 L. Ed. 912, 21 Sup. Ct. Rep. 623; French v. Barber Asphalt Paving Co., 181 U. S. 324, 45 L. Ed. 879, 21 Sup. Ct. Rep. 625."
>
> *Cleveland C., C. & St. L. R. Co. v. Porter*, 210 U. S. 177.

In Pittsburg v. Board of Public Works, 172 U. S. 32, the court says:

> "But it is not important, in this case, to pursue that course in inquiry; since, in matters to taxation, it is sufficient that the party assessed should have an opportunity to be heard, either before a judicial tribunal, or before a board of assessment, at some stage of the proceedings. *Kelly v. Pittsburgh*, 104 U. S. 78 (26:658); *Pitts-*

burgh C. C. & St. L. Railway Co. v. Backus, 154 U. S. 421 (38:103)."

Kentucky Union Co. v. Kentucky, 219 U. S. 140, involved the question of due process of law and the authorities are reviewed at some length:

> "It is next contended that the Kentucky statute under consideration denies to the plaintiffs in error due process of law, in violation of the 14th amendment to the Constitution.
>
> "This court has had frequent occasion to comment upon the effect of this amendment in respect to laws of the states for the levy and collection of taxes. A summary procedure has been sustained where the person taxed has been allowed opportunity to be heard in opposition to the enforcement of taxes and penalties against him. In *McMillen v. Anderson*, 95 U. S. 37, 41, 24 L. Ed. 335, 336, this court said:
>
> " 'The mode of assessing taxes in the states by the Federal government, and by all governments, is necessarily summary, that it may be speedy and effectual. By summary is not meant arbitrary, or unequal, or illegal. It must, under our Constitution, be lawfully done.'
>
> "See, in this connection, *Leigh v. Green*, 193 U. S. 79, 48 L. Ed. 623, 24 Sup. Ct. Rep. 390; *Ballard v. Hunter*, 204 U. S. 241, 51 L. Ed. 461, 27 Sup. Ct. Rep. 261, and cases therein cited.
>
> "Summary proceedings adapted to the circumstances, and permitting the taxpayer to appear and be heard at some stage of the proceedings, have been held to satisfy

the requirements of due process of law. *Security Trust & S. V. Co. v. Lexington*, 203 U. S. 323, 51 L. Ed. 204, 27 Sup. Ct. Rep. 87.

"The state of West Virginia, by its Constitution, in 1872, inaugurated a system of forfeiture of lands for non-payment of taxes in some respects analogous to the one under consideration now. The West Virginia system was before this court in *King v. Mullins*, 171 U. S. 404, 43 L. Ed. 214, 18 Sup. Ct. Rep. 925. In that case due process of law, in connection with the taxing system of the state, was given full consideration; and the Constitution of West Virginia, when read in connection with the statutes of the state, was held to afford due process of law. The Constitution of the state of 1872, by article 13, §6, made it the duty of every owner of land to have it entered on the land books of the county in which it, or a part of it, is situated, and to cause himself to be charged with the taxes thereon and pay the same; and when, for any five successive years after the year 1869, the owner of any tract of land containing 1,000 acres or more should not have been charged on such books with the state tax on said land, then, by operation of the Constitution, the land was forfeited and the title vested in the state. The statute of the state provided for proceedings by the commissioner of the school fund to subject forfeited lands to sale, in which proceeding the owner was permitted to intervene by petition and obtain a redemption of his land from the forfeiture claimed by the state; and after a full discussion of the subject and the bearings of the 14th amendment of the Consti-

tution upon the statute Mr. Justice Harlan, who delivered the opinion of the court, said:

"'For the reasons stated, we hold that the system established by West Virginia, under which lands liable to taxation are forfeited to the state by reason of the owner not having them placed or caused to be placed, during five consecutive years, on the proper land books for taxation, and caused himself to be charged with the taxes thereon, and under which, on petition required to be filed by the representative of the estate in the proper circuit court, such lands are sold for the benefit of the school fund, with liberty to the owner, upon due notice of the proceeding, to intervene by petition and secure a redemption of his lands from the forfeiture declared by paying the taxes and charges due upon them, is not inconsistent with the due process of law required by the Constitution of the United States or the Constitution of the state.'"

In *Hagar v. Reclamation District No.* 108, 111 U. S. 701, the Reclamation District filed in the District Court of California a bill to enforce the payment of certain assessments on the lands of the defendant Hagar for reclamation purposes. The causes were removed into the court below on petitions by the defendant. That court entered a decree for the complainant, declaring the assessments to be valid liens upon the lands of the defendant, and ordering a sale of said lands to pay said assessments, with in-

terest and costs. Whereupon, the defendant appealed to the Supreme Court of the United States.

By an act of the legislature of California in 1868, a general system was established for reclaiming swamp and overflowed, salt marsh and tide lands in the state. The court says, by Mr. Justice Field:

> "The objections urged to the validity of the assessment on federal grounds are substantially these: That the law under which the assessment was made and levied, conflicts with the clause of the 14th amendment of the Constitution declaring that no state shall deprive any person of life, liberty or property without due process of law; and impairs the obligation of the contract between California and the United States; that the proceeds of the swamp and overflowed lands ceded by the Arkansas act should be expended in reclaiming these.
>
> "That clause of the 14th amendment is found, in almost identical language, in the several state Constitutions, and is intended as additional security against the arbitrary deprivation of life and liberty and the arbitrary spoliation of property. Neither can be taken without due process of law. What constitutes that process it may be difficult to define with precision so as to cover all cases. It is, no doubt, wiser, as stated by Mr. Justice Miller in *Davidson v. New Orleans*, to arrive at its meaning 'By the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require, with the reasoning on which such decisions may be founded.' It is sufficient to observe here, that by 'due

process' is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights. * * * Undoubtedly, where life and liberty are involved, due process requires that there be a regular course of judicial proceedings, which imply that the party to be affected shall have notice and an opportunity to be heard; *but where the taking of property is in the enforcement of a tax, the proceeding is necessarily less formal,* and whether notice to him is at all necessary may depend upon the character of the tax and the manner in which its amount is determinable. The necessity of revenue for the support of the government does not admit of the delay attendant upon proceedings in a court of justice, and they are not required for the enforcement of taxes or assessments. As stated by Mr. Justice Bradley, in his concurring opinion in *Davidson v. New Orleans:* 'In judging what is "due process of law" respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain or the power of assessment for local improvements or

some of these; and if found to be suitable or admissible in the special case, it will be adjudged to be "due process of law," but if found to be arbitrary, oppressive and unjust, it may be declared to be not "due process of law." ' The power of taxation possessed by the state may be exercised upon any subject within its jurisdiction, and to any extent not prohibited by the Constitution of the United States.

* * * * * *

"But where a tax is levied on property, not specifically but according to its value, to be ascertained by assessors appointed for that purpose upon such evidence as they may obtain, a different principle comes in. The officers, in estimating the value, act judicially, and in most of the states provision is made for the correction of errors committed by them, through boards of revision or equalization, sitting at designated periods provided by law, to hear complaints respecting the justice of the assessments. The law in prescribing the time when such complaints will be heard, gives all the notice required, and the proceeding by which the valuation is determined, though it may be followed, if the tax be not paid, by a sale of the delinquent's property, is due process of law.

"In some states, instead of a board of revision or equalization, the assessment may be revised by proceedings in the courts and be there corrected if erroneous, or set aside if invalid; or objections to the validity or amount of the assessment may be taken when the attempt is made to enforce it. In such cases all the opportunity is given to the taxpayer to be heard respecting the assessment, which can be deemed

essential to render the proceedings due process of law. In *Davidson v. New Orleans* this court decided this precise point. In that case, an assessment levied on certain real property in New Orleans for draining the swamps of that city was resisted, on the ground that the proceeding deprived the owners of their property without due process of law; but the court refused to interfere, for the reason that the owners of the property had notice of the assessment and an opportunity to contest it in the courts. After stating that much misapprehension prevailed as to the meaning of the terms 'due process of law,' and that it would be difficult to give a definition that would be at once perspicuous and satisfactory, the court, speaking by Mr. Justice Miller, said that it would lay down the following proposition as applicable to the case: *'That whenever by the laws of a state, or by state authority, a tax, assessment, servitude or other burden is imposed upon property for the public use, whether it be for the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections.'"*

In *Cincinnati etc. Railway Co. v. Kentucky* (Kentucky Railroad Tax Cases), 115 U. S. 321, it was held that "due process of law," as ap-

plied to proceedings for the levy and collection of taxes, does not imply nor require the right to such notice and hearing as are considered essential to the validity of the proceedings and judgments of judicial tribunals.

It was urged in that case that the Act of April 3, 1878, as to taxation of railways and the taxes levied in pursuance of it if enforced is in effect taking the property of defendants below without due process of law, and that they constitute a denial of the equal protection of the laws, in both particulars violating the 14th amendment to the Constitution of the United States. After discussing the meaning of the term "due process of law," the court, by Mr. Justice Matthews, says:

> "In its application to proceedings for the levy and collection of taxes, it was said in *McMillen v. Anderson*, 95 U. S. 37, that it 'is not, and never has been, considered necessary to the validity of a tax,' 'that the party charged should have been present, or had an opportunity to be present, in some tribunal when he was assessed.' This language, it is true, was used in the decision of a case in reference to a license tax where all the circumstances of its assessment were declared by statute, and nothing was intrusted to the discretion of public officers; but, in the *State Railroad Tax Cases*, 92 U. S. 575, where the ascertainment of the taxable value of railroads was the duty of a board, as in the present case, whose assessment was challenged for the reason that the proceeding was not 'due

> process of law,' for want of notice and a hearing, it was said by Mr. Justice Miller, delivering the opinion of the court: 'This board has its time of sitting fixed by law. Its sessions are not secret. No obstruction exists to the appearance of anyone before it to assert a right or redress a wrong; and in the business of assessing taxes, this is all that can be reasonably asked.' "

In *McMillen v. Anderson* (5 Otto 37-42), 95 U. S. 37, the defendant in error, who was tax collector of the state of Louisiana for the parish of Carroll, seized property of the plaintiff in error and was about to sell it for the payment of his license tax, as a person engaged in business is liable to a tax. In accordance with the laws of Louisiana, plaintiff in error brought an action in the proper court for the trespass, and in the same action obtained a temporary injunction against the sale of the property seized. Defendant pleaded that the seizure was for taxes due, and was what his duty as collector required him to do. Plaintiff thereupon took an appeal to the Supreme Court of Louisiana, and in his petition for appeal alleged that the law under which the proceedings of defendant were had is void, because it is in conflict with the Constitutions of Louisiana and of the United States, and, as he now argues, is specifically opposed to the provision of the 14th amendment of the latter, which declares that no state shall

deprive any person of life, liberty or property without due process of law. The court said:

> "The judgment of the Supreme Court of Louisiana, to which the present writ of error is directed, affirming that of the inferior court, must be taken as conclusive on all the questions mooted in the record except this one. It must, therefore, be conceded that plaintiff was liable to the tax; that, if the law which authorized the collector to seize the property was valid, his proceedings under it were regular; and that the judgment of the court was sustained by the facts in the case.
>
> "Looking at the Louisiana statute here assailed, the Act of March 14, 1873, we feel bound to say, that, if it is void on the ground assumed, the revenue laws of nearly all the states will be found void for the same reason. The mode of assessing tax in the states by the federal government, and by all governments, is necessarily summary, that it may be speedy and effectual. By summary is not meant arbitrary, or unequal, or illegal. It must, under our Constitution, be lawfully done.
>
> "But that does not mean, nor does the phrase 'due process of law' mean by a judicial proceeding. The nation from whom we inherit the phrase 'due process of law' has never relied upon the courts of justice for the collection of her taxes, though she passed through a successful revolution in resistance to unlawful taxation. We need not here go into the literature of that constitutional provision, because, in any view that can be taken of it, the statute under consideration does not violate it. It enacts that, when any person shall fail or refuse

to pay his license tax, the collector shall give ten days' written or printed notice to the delinquent requiring its payment; and the manner of giving this notice is fully prescribed. If at the expiration of this time the license 'be not fully paid, the tax collector may, without judicial formality, proceed to seize and sell, after ten days' advertisement, the property' of the delinquent, or so much as may be necessary to pay the tax and costs.

"Another statute declares who is liable to this tax, and fixes the amount of it. The statute here complained of relates only to the manner of its collection.

"Here is a notice that the party is assessed, by the proper officer, for a given sum as a tax of a certain kind, and ten days' time given him to pay it. Is not this a legal mode of proceeding? It seems to be supposed that it is essential to the validity of this tax that the party charged should have been present, or had an opportunity to be present, in some tribunal when he was assessed. But this is not and never has been considered necessary to the validity of a tax. And the fact that most of the states now have boards of revisers of tax assessments does not prove that taxes levied without them are void.

* * * * * *

"But, it is said that this is not due course of law, because the judge granting the injunction is required to take security of the applicant, and that no remedial process can be within the meaning of the Constitution which requires such a bonus as a condition precedent to its issue.

"It can hardly be necessary to answer an argument which excludes from the defini-

> tion of due process of law all that numerous class of remedies in which, by the rules of the court or by legislative provisions, a party invoking the powers of a court of justice is required to give that security which is necessary to prevent its process from being used to work gross injustice to another."

In Davidson v. Board of Administrators of the City of New Orleans (6 Otto 97-108), 96 U. S. 97, this matter was considered.

In that case, on the 7th day of December, 1871, the petition of the city of New Orleans and the administrators thereof was filed setting forth an assessment on certain real estate, made under the statutes of Louisiana, for draining the swamp lands within certain parishes, and asking that the assessment should be homologated by the judgment of the court. The estate of John Davidson was assessed for various parcels in different places for about $50,000. On appeal from the decree of the court, the Supreme Court of Louisiana reversed it, and ordered the dismissal of the oppositions and decreed that the assessment roll presented be approved and homologated, and that the approval and homologation so ordered should operate as a judgment against the property described in the assessment roll, and also against the owner or owners thereof. The court said by Mr. Justice Miller:

"The objections raised in the state courts to the assessment were numerous and varied, including constitutional objections to the statute under which the assessment was made, and alleged departures from the requirements of the statute itself. The only federal question is, whether the judgment is not in violation of that provision of the Constitution which declares that 'No state shall deprive any person of life, liberty, or property without due process of law'; the argument seems to suppose that this court can correct any other error which may be found in the record.

"1. It is said that the legislature had no right to organize a private corporation to do the work, and, by statute, to fix the price at which the work should be done.

"2. That the price so fixed is exorbitant.

"3. That there may be a surplus collected under the assessment beyond what is needed for the work, which must in that event go into the city treasury.

"Can it be necessary to say, that if the work was one which the state had authority to do, and to pay for it by assessments on the property interested, that on such questions of method and detail as these the exercise of the power is not regulated or controlled by the Constitution of the United States?

"Of a similar character is the objection much insisted on, that, under the statute, the assessment is actually made before, instead of after, the work is done. As a question of wisdom—of judicious economy—it would seem better in this, as in other works which require the expenditure of large sums of money, to secure the

means of payment before becoming involved in the enterprise; and if this is not due process of law, it ought to be. * * *

"When, in the year of grace 1866, there is placed in the Constitution of the United States a declaration that 'No state shall deprive any person of life, liberty, or property without due process of law,' can a state make anything due process of law which, by its own legislation, it chooses to declare such? To affirm this is to hold that the prohibition to the state is of no avail, or has no application where the invasion of private rights is affected under the forms of state legislation. It seems to us that a statute which declared in terms, and without more, that the full and exclusive title of a described piece of land, which is now in A, shall be and is hereby vested in B, would, if effectual, deprive A of his property without due process of law, within the meaning of the constitutional provision.

"A most exhaustive judicial inquiry into the meaning of the words 'due process of law,' as found in the 5th amendment, resulted in the unanimous decision of this court, that they do not necessarily imply a regular proceeding in a court of justice, or after the manner of such courts. *Murray v. Hoboken Land Co.*, 18 How. 272 (59 U. S. XV 372). That was an action of ejectment, in which both plaintiff and defendant asserted title under Samuel Swartwout, the plaintiff, by virtue of an execution, sale, and deed, made on a judgment obtained in the regular course of judicial proceedings against him; and the defendant, by a seizure and sale by a marshal of the United States, made under a distress

warrant issued by the solicitor of the treasury, under the Act of Congress of May 20, 1820."

The court further says:

"It was argued that these proceedings deprived Swartwout of his property without due process of law. 'The objections,' says the court, 'raise the questions whether, under the Constitution of the United States, a collector of the customs, from whom a balance of account has been found to be due by accounting officers of the treasury, designated for that purpose by law, can be deprived of his liberty or property, in order to enforce payment of that balance, without the exercise of the judicial power of the United States, and yet by due process of law, within the meaning of those terms in the Constitution; and, if so, secondly, whether the warrant in question was such due process of law.

"The court held that the power exercised was executive, and not judicial; and that the issue of the writ, and proceedings under it, were due process of law within the meaning of the Constitution. The history of the English mode of dealing with public debtors and enforcing its revenue laws is reviewed, with the result of showing that the rights of the Crown, in these cases, had always been enforced by summary remedies, without the aid of the usual course of judicial proceedings, though the latter were resorted to in the exchequer court, when the officers of the government deemed it advisable. And it was held that such a course was due process of law within the meaning of that phrase as derived

from our ancestors and found in our Constitution.

* * * * * *

"Whenever by the laws of a state, or by state authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be of the whole state or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as it is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

In *Kirtland v. Hotchkiss,* 100 U. S. 491, the court, speaking through Mr. Justice Harlan, says:

"In *McCulloch v. Maryland,* 4 Wheat. 428, this court considered very fully the nature and extent of the original right of taxation which remained with the states after the adoption of the federal Constitution. It was there said 'That the power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the government may choose to carry it.' Tracing the right of taxation to the source from which it was derived, it was further said: 'It is obvious that it is an incident of sovereignty, and is co-extensive with that to which it is an

incident. All subjects over which the sovereign power of a state extends are objects of taxation, but those over which it does not extend are, upon the soundest principles, exempt from taxation.' "

After quoting *St. Louis v. Ferry Co.*, 11 Wall. 423, and *State Tax on Foreign Held Bonds*, 15 Wall. 300, the court continues:

"In the last named case we said that 'Unless restrained by provisions of the federal Constitution, the power of the state as to the mode, form and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction.'

"We perceive no reason to modify the principles announced in these cases or to question their soundness. They are fundamental and vital in the relations which under the Constitution of the United States exist between the federal and state governments. Upon their strict observance depends, in no small degree, the harmonious working of our complex system of government, federal and state. It may, therefore, be regarded as the established doctrine of this court, that so long as the state, by its system of taxation, does not intrench upon the legitimate authority of the Union, or violate any right recognized or secured to the citizens by the Constitution of the United States, this court, as between the citizen and his state, can afford no relief against state taxation, however unjust, oppressive or onerous."

In Fallbrook Irrig. Dist. v. Bradley, 164 U. S. 112-168, this court held that due process

of law is not violated and equal protection of the laws is given when the ordinary course is pursued in such proceedings for the assessment and collection of taxes that has been continuously followed in the state, and where the party who may be subsequently charged in his property has had a hearing or an opportunity for one provided by the statute.

The provisions of the 14th amendment do not cover such objection as is now under consideration. The general system of procedure for the levying and collection of taxes which is established in this country is within the meaning of the constitutional "due process of law," and the federal courts ought not interfere when what is complained of amounts to the enforcement of the laws of a state applicable to all persons in like circumstances and conditions.

In another case Mr. Justice Day has said:

> "The state has a right to adopt its own method for collecting its taxes which can only be interfered with by federal authority when necessary for the protection of rights guaranteed by the federal Constitution."
>
> Leigh v. Green, 193 U. S. 79.

In Merchants Bank v. Penn, 167 U. S. 461, it is said:

> "A final objection is that there is a lack of due process of law, in that the property of the shareholders is subjected to an *ad valorem* tax without an opportunity being

given to them to be heard as to the value. It is true the statute contemplates no personal notice to the shareholder, but that has never been considered an essential to due process in respect to taxation. The statute defines the time when the bank shall make its report to the auditor general, and it specifically directs him to hear any stockholder who may desire to be heard. The statute, therefore, fixes the time and place, for official proceedings are always, in the absence of express provision to the contrary, to be had at the office of the officer charged with the duties; and a notice to all property holders of the time and place at which the assessment is to be made is all that 'due process' requires in respect to the matter of notice in tax proceedings. As said in *Hagar v. Reclamation Dist. No.* 108, 111 U. S. 701:

" 'The law in prescribing the time when such complaints will be heard gives all the notice required; and the proceeding by which the valuation is determined, though it may be followed, if the tax be not paid, by a sale of the delinquent's property, is due process of law.' " Citing: *Bells' Gap. R. Co. v. Pennsylvania,* 134 U. S. 232; *Spencer v. Merchant,* 125 U. S. 345; *Palmer v. McMahon,* 133 U. S. 660; *Lent v. Tillson,* 140 U. S. 316; *Paulsen v. Portland,* 149 U. S. 30."

When the ordinary course is pursued in tax proceedings for the assessment and collection of taxes that has been continuously followed in the state and where the party taxed has had a hearing or an opportunity for one is provided by

statute, it is not taking property without due process of law.

Kelly v. Pittsburg, 104 U. S. 78;
Fallbrook Ir. Dist. v. Bradley, 164 U. S. 112;
Weyerhaeuser v. Minn., 176 U. S. 550;
Turpin v. Lemon, 187 U. S. 51;
Hibben v. Smith, 191 U. S. 310;
Leigh v. Green, 193 U. S. 79.

Where the statute names the time and place for the meeting of the assessment board, it is sufficient notice to taxpayers and personal notice is unnecessary.

Merchants etc. Bank v. Penn, 167 U. S. 461;
Castillo v. McConnico, 168 U. S. 674.

Defendant in error therefore submits that under the well settled principles of our jurisprudence as established by the uniform decisions of this court and the highest court of California, the tax deed under which he holds the property described in these proceedings is valid, that said proceedings are in harmony with the federal Constitution, and that the decision of the Supreme Court of California should be affirmed, with costs to defendant in error.

Respectfully submitted,

EDW. F. WEHRLE,

Attorney for Defendant in Error.

CHAPMAN *v.* ZOBELEIN.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

No. 200. Submitted March 11, 1915.—Decided April 5, 1915.

An issue as to the invalidity of a tax levy merely because excessive does not raise a Federal question.

A statute providing for the sale of property for taxes giving an opportunity to be heard as to the fairness of the original assessment and providing notice be given of the place and time of sale with a right of redemption for five years, does not deprive the owner of his prop-

erty without due process of law within the meaning of the Fourteenth Amendment and so *held* as to § 3897 of the Civil Political Code of California.
19 Cal. App. 132, affirmed.

THE facts, which involve the constitutionality under the due process of law provision of the Fourteenth Amendment of certain provisions under the tax law of the State of California, in regard to amount of property and its sale for taxes, are stated in the opinion.

Mr. Ernest E. Wood, with whom *Mr. Charles Lantz* was on the brief, for plaintiff in error.

Mr. Edward F. Wehrle for defendant in error.

MR. JUSTICE LAMAR delivered the opinion of the court.

The laws of California provide a means by which the owner of property can be heard before the Board of Equalizers as to the fairness of the tax assessment. If no objection is made and the taxes are not paid a delinquent list is published. If default still continues the property, instead of being offered to the highest bidder, is sold to the State which holds the 'absolute title as of the date of the expiration of five years from the time of the sale.' During that period the owner has the right to redeem by paying the original and accrued taxes, penalties and interest. It is, however, not the policy of the State to retain separate parcels of land; and if the owner does not redeem within the five years and if the State has not otherwise disposed of the same the statute provides that the land or so much thereof as the Controller may think necessary shall after public advertisement and notice to the owner be sold to the highest bidder.[1]

[1] 3897. "Whenever the State shall become the owner of any property sold for taxes and the deed to the State has been filed . . . the Controller may thereupon by a written authorization direct the

Under these laws an assessment of $1.80 was made against a lot in Los Angeles standing in the name of Givens. It was regularly and duly sold on July 1, 1899. A certificate was made and recorded, which recited that the lot had been sold to the State for $2.51 and that its title would become absolute on July 2, 1904, unless in the meantime redeemed as provided by law. There was no offer to redeem, and in January, 1905, the Controller having determined that past due and accrued taxes, penalties and costs amounted to $16.19, directed the County Tax Collector to sell the lot to the highest bidder for cash. After the required publication and notice by mail, the property was on February 11, 1905, sold to Zobelein, for the sum of $166. A deed was made to him and the proceeds of the sale deposited with the Treasurer for the use of the State and County as provided by law.

On March 19, 1908, William Chapman claiming to be the owner of the lot made a tender of the original and accrued taxes, penalties and interest to date. The tender having been refused he filed a bill asking that his title be quieted and that Zobelein's tax deed be canceled. On the trial Chapman offered evidence to show that there were

tax-collector . . . to sell the property or any part thereof as in his judgment he shall deem advisable in the manner following: he must give notice of such sale by first publishing a notice for at least three successive weeks . . . such notices must state specifically the place . . . day and hour of sale . . . a description of the property . . . a statement of all the delinquent taxes, penalties, costs, interest and expenses up to the date of such sale . . . the name of the person to whom the property was assessed. . . . Said notice shall also embody a copy of the authorization received from the controller. It shall be the duty of the tax-collector to mail a copy of said notice, postage thereon prepaid, to the party to whom the land was last assessed next before the sale, at his last known post-office address. At the time set for such sale, the tax-collector must sell the property described in the controller's authorization and said notices, at public auction to the highest bidder for cash in lawful money of the United States. . . ."

those present at the sale who would have been willing to pay $16.19, the full amount of the tax, for a strip ten feet off of the easterly or northern end of the lot—leaving the remainder to the owner; that the Collector had not offered to sell so much of the land as would bring the amount of the tax but, instead, had sold the entire lot, 40 by 140 feet in size, and of the full value of $500 for $166, and that the excess, $149.81, had been covered into the treasury. By reason of these facts he claims that the sale was void and that the statute in authorizing such a sale operated to take his property without due process of law. The bill to quiet title was dismissed, and that judgment having been affirmed, the case is here on writ of error.

The plaintiff relies upon *Slater* v. *Maxwell*, 6 Wall. 268, and other like cases, in which sales under an excessive levy were held to be void. But those decisions are not applicable here, not only because an issue as to the invalidity of a levy merely because excessive, does not raise a Federal question, but because the statute here by giving a five-year period of redemption was intended in part to afford the tax payer an opportunity to protect himself against the sale of valuable property for an insignificant sum. The statute in providing that the State should buy in the property and holding it subject to redemption for five years, intended to furnish relief to those who, for want of ability to pay, or for want of notice of the levy, might otherwise be deprived of their property by an ordinary tax sale. Whatever the character of the title which the State acquired at the first sale,—whether legal or equitable,—it was in any event defeasible by redemption within five years.

The plaintiff in error insists, however, that at the second sale property worth $500 was sold for $166 all of which went to the State. He says that this was forfeiture pure and simple, and that there can be no valid forfeiture without a judicial determination as to the existence of the facts

warranting so heavy a penalty. 2 Cooley on Taxation (3d ed.), 858.

The plaintiff's contention must be limited to a consideration of the attack on the proceedings in which his lot was sold in 1905. And, without undertaking to consider the essentials of a valid forfeiture of property for non-payment of taxes, it is sufficient to say that, in the present case, the statute gave an opportunity to be heard as to the fairness of the original assessment. It gave notice of the time and place at which the property would be sold to the State subject to the owner's right to redeem during a period of five years. Under the California decisions the first sale, at the end of five years, vested the State with the title. *King* v. *Mullen*, 171 U. S. 417, 436. See also 2d Cooley on Taxation, 3d ed., 862. The present case is even stronger, for this is a bill attacking the title of the purchaser who bought at the second sale, after notice had been given to the owner, by publication and mail of the time and place when it would occur—his right to redeem continuing up to the time the State actually entered or sold. *Santa Barbara* v. *Savings Society*, 137 California, 463. Certainly such a sale, after the finding by the Controller of the amount of taxes due and after public and special notice to the owner would "work the investment of the title through the public act of the Government. . . . The sale was the public act which is equivalent to office found." *King* v. *Mullin*, 171 U. S. 417, 436. That case shows that the defendant was not deprived of his property without due process of law in violation of the Fourteenth Amendment. All other questions raised by the record are concluded by the decision of the state court. The judgment of the Supreme Court of California is

Affirmed.